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STATE OF CALIFORNIA
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THURSDAY, MAY 18, 2000
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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 3191

12 SACRAMENTO, CALIFORNIA

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15 THURSDAY, MAY 18, 2000

16 9:13 A.M.

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25 Reported by:

26
27 Evelyn J. Mizak
28 Shorthand Reporter

STATE OF CALIFORNIA

DEPARTMENT OF REVENUE

WELLES

STATE OF CALIFORNIA

DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

APPEARANCESMEMBERS PRESENT

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3 SENATOR JOHN BURTON, Chair

4 SENATOR JOHN LEWIS, Vice Chair

5 SENATOR JOE BACA

6 SENATOR TERESA HUGHES

7 SENATOR WILLIAM KNIGHT

8 SENATOR JACK O'CONNELL

STAFF PRESENT

9
10 GREG SCHMIDT, Executive Officer

11 PAT WEBB, Committee Secretary

12 NETTIE SABELHAUS, Consultant on Governor's Appointments

13 WADE TEASDALE, Consultant to SENATOR LEWIS

14 FELICE TANENBAUM, Consultant to SENATOR HUGHES

ALSO PRESENT

15
16
17 LEONARD MUNOZ, Member
Board of Prison Terms

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--ooOoo--

CHAIRMAN BURTON: Mr. Munoz, good morning, sir.

MR. MUNOZ: Good morning, sir. How are you?

CHAIRMAN BURTON: I'm okay.

Back to the Rosenkrantz court order, and the testimony before the Committee, I guess it was last week, that commissioners only read materials related to the hearings that they chair; is that correct?

In other words, you would not necessarily read the information on a hearing somebody else was holding?

MR. MUNOZ: That's --

CHAIRMAN BURTON: This is not a trick question.

MR. MUNOZ: I understand that, sir.

CHAIRMAN BURTON: In other words, basically if you're holding the hearing, you're reading the stuff pertinent to you. You're not reading, you don't necessarily concern yourself, unless you have the time, with the information on a hearing being held by one of the other commissioners?

MR. MUNOZ: That's correct.

CHAIRMAN BURTON: You've stated that you didn't read the court order prior to the Rosenkrantz hearing; that is correct?

MR. MUNOZ: Yes, sir.

CHAIRMAN BURTON: And the reason for that was?

MR. MUNOZ: I was there basically in response to an emergency that happened to a commissioner that was assigned to handle that situation. I was pulled in from another

1 institution in the southern end of the state, in San Diego, at
2 the last minute to replace Commissioner Ortega. His mother had
3 passed away.

4 CHAIRMAN BURTON: Do you recall whether or not
5 the court order was in the information packet you got at the
6 hearing?

7 MR. MUNOZ: It was addressed by the chair of that
8 particular panel as far as the --

9 CHAIRMAN BURTON: It wouldn't have been in your
10 packet?

11 MR. MUNOZ: I don't think it was in my packet,
12 no.

13 CHAIRMAN BURTON: When the chair addressed it, do
14 you remember what he said?

15 MR. MUNOZ: Basically he said the court order was
16 to conduct a hearing and to -- and to grant a date.

17 CHAIRMAN BURTON: So, you were aware of that?

18 MR. MUNOZ: Yes, sir.

19 CHAIRMAN BURTON: Well, do you think that you
20 guys complied with the court order?

21 MR. MUNOZ: Yes, sir.

22 CHAIRMAN BURTON: Did you set a date?

23 MR. MUNOZ: Yes, sir, we did.

24 CHAIRMAN BURTON: In your last testimony, you
25 stated that Mr. Rosenkrantz had been a model prisoner.

26 MR. MUNOZ: Yes.

27 CHAIRMAN BURTON: You also said that one of the
28 things you try to do is get in the mind of the trial judge when

1 you reach your decisions on suitability?

2 MR. MUNOZ: I recall making a statement like
3 that, yes.

4 CHAIRMAN BURTON: Is that what you think?

5 MR. MUNOZ: Pardon me?

6 CHAIRMAN BURTON: That's what you think? In
7 other words, you made the statement --

8 MR. MUNOZ: Yes, yes.

9 CHAIRMAN BURTON: The letter from the trail judge
10 supported giving parole.

11 MR. MUNOZ: That's correct.

12 CHAIRMAN BURTON: Senator Lewis.

13 SENATOR LEWIS: The judge ordered you to set a
14 date for parole, and you did that?

15 MR. MUNOZ: Yes, sir; that's correct.

16 SENATOR LEWIS: Did the judge order you to find
17 Mr. Rosenkrantz suitable?

18 MR. MUNOZ: No, sir.

19 SENATOR LEWIS: Did you do that?

20 MR. MUNOZ: Mr. Rosenkrantz was found unsuitable.

21 SENATOR LEWIS: So, you believe that you abided
22 by the exact order of the court?

23 MR. MUNOZ: Yes, sir, I do.

24 CHAIRMAN BURTON: Why would you set a date if you
25 didn't think somebody was suitable?

26 MR. MUNOZ: To comply with the court order, sir.

27 SENATOR LEWIS: The court screwed up.

28 CHAIRMAN BURTON: In other words, they have to

1 come back and order you to find him suitable for you to find him
2 suitable?

3 MR. MUNOZ: I suppose that's an option for the
4 court to do -- to do that.

5 CHAIRMAN BURTON: Well, let me just say this.

6 I've had discussions with the Governor's Office
7 and with the Secretary about the whole process that you have --
8 and not just you, the people that have been there before you.

9 MR. MUNOZ: Yes, sir.

10 CHAIRMAN BURTON: But, you know, there ought to
11 be a decision to review guidelines. Should be, like, narrow
12 focused on parole plans, ensuring that relevant, reliable
13 information related directly to suitability should be used.
14 That there ought to be process changes, that the inmate should
15 be allowed to respond to any new evidence before the decision's
16 made, without having to go through a new hearing or appeal
17 process.

18 And we're concerned, although the statute does
19 require it, that a commissioner who denies parole, or even
20 grants parole, but I guess denies parole, and he's sitting, it's
21 like having a trial judge sit on the appeal court. I mean, you
22 already made your decision. Again, it's part of the process.

23 And Members of the Committee are going to vote to
24 send you to the Floor. I personally will not vote for you on
25 the Floor. That's me.

26 But I've made it very clear that if there are not
27 reforms in the process, because the Governor has his point of
28 view, which is his point of view, and he's allowed, certainly,

1 to implement his own vision on this, is that if the Board grants
2 paroles, he can always deny. The grant dates he can deny.

3 But if the process is not changed, as far as I'm
4 concerned, I'm never going to see another Board of Prison Terms
5 member sitting before me, no matter who it is, because we don't
6 need it.

7 If there would be a way to basically do some of
8 the other duties of the Board of Prison Terms, I'd just as soon
9 zero it out, save the money, and put it into special education.

10 But, you know, I think that I have great faith in
11 Mr. Presley. I've made my feelings known to the Governor's
12 Office, and I'm not interested in prolonging, or shortening in
13 this case, your situation.

14 But, I mean, it's a matter of the record that if
15 there are not procedural changes, and that doesn't mean
16 everybody's got to get a date, and everybody's got to get out.
17 Nobody's looking for Charles Manson to be out on the streets.

18 But there are a whole lot of people that should
19 be, which is, one, the right thing to do; and two, it would be
20 saving the state money; and three, you know, you made your
21 position, I think, on the women down at Frontera, and the
22 battered women syndrome, that you, at least, had some sympathy
23 toward those issues without prejudging any case.

24 You are familiar with the women who are down
25 there; right?

26 MR. MUNOZ: Yes, sir.

27 CHAIRMAN BURTON: Especially the ones who were
28 convicted prior to the availability of that defense.

1 MR. MUNOZ: Yes, sir.

2 CHAIRMAN BURTON: And I'm hoping to introduce
3 legislation will that would put that affirmative defense, that's
4 available now, at the time of one of your criteria of
5 considerations, so that's clear.

6 Are there, briefly, any other witnesses here who
7 want to talk?

8 Okay, Senator Lewis? Anybody?

9 SENATOR LEWIS: What would be proper motion be?

10 CHAIRMAN BURTON: Move to send it to it Floor.

11 SENATOR LEWIS: I make that motion.

12 CHAIRMAN BURTON: Call the roll.

13 SECRETARY WEBB: Senator Hughes.

14 SENATOR HUGHES: Aye.

15 SECRETARY WEBB: Hughes Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator O'Connell.

18 SENATOR O'CONNELL: Aye.

19 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Burton.

22 CHAIRMAN BURTON: No.

23 SECRETARY WEBB: Burton No. Four to one.

24 CHAIRMAN BURTON: Thank you, sir.

25 MR. MUNOZ: Thank you.

26 [Thereupon this portion of the
27 Senate Rules Committee hearing was
28 terminated at approximately 9:25 A.M.]

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of May, 2000.


EVELYN J. MIZAK
Shorthand Reporter

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27 Evelyn J. Mizak
28 Shorthand Reporter

1 VICKI SHADD
2 Work Ability I

3 DWIGHT HANSEN
4 California Rehabilitation Association

5 LYNDA BARDIS, President
6 Disabled in State Service

7 IRENE GUTIERREZ-GARZA, Co-Chair
8 California Coalition of Minorities, Women, and
9 Disabled Persons
10 Vice President, Café de California

11 DAVID DeLEONARDIS
12 California Association of Social Rehabilitation Agencies

13 SAM SEATON, Vice Chair
14 State Rehabilitation Council
15 Department of Rehabilitation

16 SHERI FARINHA MUTTI
17 California Coalition of Agencies Serving the Deaf and
18 Hard of Hearing, Inc.

19 DR. JEANNE HEYERICK
20 Brain Injury Association of California

21 JIM HUYEK, Executive Director
22 Alta California Regional Center, Sacramento

23 SAMUEL SCHUCHAT, Member,
24 Fish and Game Commission

25 SENATOR DON PERATA

26 COREY BROWN
27 Trust for Public Land

28 BILL GAINES, Director
Government Affairs
California Waterfowl Association

LYNN SADLER, Executive Director
Mountain Lion Foundation

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1
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3 CHAIRMAN BURTON: First off, Governor's
4 appointees, Catherine Campisi, Director, Department of Rehab.

5 DR. CAMPISI: Good afternoon, Senator Burton and
6 Members of the Rules Committee.

7 I'm pleased to appear before you for confirmation
8 as Director of the Department of Rehabilitation. I was deeply
9 honored and humbled by Governor Davis' appointment of me to
10 serve in this capacity.

11 As my written statement to you indicates, I come
12 to you as a former client of the California Department of
13 Rehabilitation, a former recipient of Social Security
14 Supplemental Income, a person with a significant disability
15 since age 10.

16 I also come to you as a person with a Ph.D. in
17 social psychology, specializing in disability issues, a person
18 with over 20 years of professional work in varied aspects of
19 disability, policy and program development, with over 12 of
20 those years at the state level, an active member in the
21 Disability Rights Movement, and an advocate for persons with
22 disabilities.

23 As you know from my written statement, I have
24 high expectations and plans for improvement of the Department of
25 Rehabilitation. Our primary goals are summarized by a couple of
26 things I'd like to point out.

27 First of all, we have a significant need to
28 increase employment outcomes for persons with the most severe

1 and severe disabilities through delivery of consumer responsive
2 cost effective services, and we are undertaking a number of
3 actions in those areas to make our services more consumer
4 responsive and cost effective.

5 We need to streamline our service delivery,
6 starting with the processes related to order of selection and
7 the determination of severity of disability, which is required
8 under the federal law.

9 And we need to improve our working relationships
10 with our partners in employment preparation of persons with
11 severe and the most severe disabilities for work.

12 I welcome the chance to lead this significant
13 team effort needed to bring about these changes in the
14 Department of Rehabilitation.

15 Thank you today for your consideration of my
16 candidacy as the Director, and I'm more than happy to answer any
17 questions that you or other Committee Members may have.

18 CHAIRMAN BURTON: Thank you, Doctor.
19 Senator Chesbro.

20 SENATOR CHESBRO: Yes, Mr. Chairman.

21 Ms. Campisi, I apologize. This is a sort of
22 after-the-fact introduction here.

23 It is my honor to appear before you to support
24 Catherine Campisi's confirmation as Executive Director of the
25 Department of Rehabilitation. She's well qualified for this
26 extremely important job. She holds a doctorate degree in
27 psychology with a specialization in social psychology of
28 disability.

1 She has 20 years of professional experience in
2 policy development and program administration for persons with
3 disabilities, including serving as both an Assistant Deputy
4 Director and Deputy Director of the Department.

5 She has served in leadership positions in many
6 and varied professional and advocacy organizations locally,
7 statewide, and at the national level. She is a well-known
8 speaker and writer on disability policy and program
9 administration.

10 Though her resume is impressive, Ms. Campisi's
11 commitment to communication and accessibility is what makes her
12 best qualified for the job.

13 During my short tenure in the State Senate,
14 Ms. Campisi has been extremely responsive to questions and
15 issues that I have raised through my position as Chair of the
16 Senate Select Committee on Developmental Disabilities and Mental
17 Health, as well as my membership on Budget Subcommittee Number
18 3, which oversees the Department's budget.

19 I've talked to many consumers, advocates, and
20 service providers, all of whom report that Ms. Campisi has set
21 herself apart by her determination to respond to issues directly
22 and personally, which is an attribute I wish existed in a lot of
23 other state departments, I might add. She is determined to be
24 accessible, and it has restored a sense of confidence to the
25 Department, a department which has historically often failed to
26 inspire this from system stakeholders.

27 If you haven't already had a chance to know her,
28 I'm confident that your interaction with her today, getting to

1 know her in the position, you'll be very impressed with what she
2 has to offer us in the state.

3 Thank you.

4 CHAIRMAN BURTON: Doctor, the Leg. Analyst, in
5 looking at the Department and looking at the budget, they found
6 that there's about a 13 percent vacancy rate within the
7 Department.

8 What would you do to reduce the rate, and how
9 long do you think it would take before you got up to full
10 complement?

11 DR. CAMPISI: We are working actively on several
12 measures to reduce that vacancy rate. We have been having a
13 significant issue, particularly in our higher cost areas, of
14 attracting people.

15 The federal act requires us to try to hire people
16 with a master's degree in rehabilitation and counseling. We
17 currently are working with the union and our other stakeholders
18 to change the classification system to create a D Class, so we
19 are able to pay people, either people already in our system with
20 a master's degree so they have less incentive to leave, also to
21 hire and attract people to our system with a better salary based
22 on their education, which is required by the federal act.

23 We're currently working with DPA on that. We
24 anticipate that that, unfortunately, may take up to six months.
25 In the meantime, we're working with them in getting a high cost
26 adjustment for several of our higher cost areas, where we've
27 advertised but have had increasing difficulty, as some other
28 state agencies, in hiring people.

1 So, we're hopeful that that will assist us in
2 bringing people to the Department.

3 The third thing that we're doing is, in our
4 Personnel Unit, we're adding a staff person to help us work
5 directly with the universities, which provide master's degrees
6 in rehabilitation counseling to try to better attract those
7 people directly into our system as they graduate. And we feel
8 that this D Classification, where we can pay them a better
9 salary, will assist us in that effort. So, we're hopeful that
10 within six months, certainly during the coming fiscal year, we
11 will make significant progress in that area.

12 CHAIRMAN BURTON: That's the first nominee we've
13 had in about a month who knew how to answer a question.

14 [Laughter.]

15 CHAIRMAN BURTON: What an absolute pleasure. I'm
16 sort of in shock, Doctor.

17 Have you ever thought of running the Department
18 of Veterans Affairs?

19 [Laughter.]

20 DR. CAMPISI: I have my hands full with Rehab.

21 CHAIRMAN BURTON: Was that just a brilliant idea
22 from the Congress that you needed a master's degree to do some
23 of this?

24 DR. CAMPISI: Well, the Department of
25 Rehabilitation, we do provide a unique level of service. It's a
26 very individualized service. And the Rehab. Act focuses on
27 persons with the most severe and severe disabilities, so it does
28 take someone who knows a lot about different aspects of

1 disability, as well as career areas for people, assistive
2 technology.

3 It is a very individualized and specialized
4 field. Therefore, the feeling is that at the national level,
5 that persons with a master's degree have the scope of knowledge
6 about various particular medical and psychological aspects of
7 disability, as well as career areas, and as I said, assistive
8 technology.

9 The Americans with Disabilities Act, there's a
10 huge base of knowledge needed to provide individualized services
11 to people. This is not uncommon.

12 For example, the community college system I came
13 from, their counselors in the Disabled Students Programs would
14 be required to have a master's degree as well.

15 CHAIRMAN BURTON: Does the Department of
16 Rehabilitation have any role in making sure that state agencies
17 live up to the mandate of the ADA? Any legal role, or just a
18 moral role?

19 DR. CAMPISI: We do not have a legal role. We
20 have been designated as the lead in helping provide training and
21 technical assistance, which we do. We have entered into a
22 number of inter-agency agreements with departments to help them
23 complete their self-evaluation and transition plan.

24 CHAIRMAN BURTON: Do you have to be asked, or can
25 you insert yourself in?

26 DR. CAMPISI: We generally wait until we're
27 asked, although we certainly are more than willing to provide
28 assistance, technical assistance, whenever the situation is

1 appropriate.

2 CHAIRMAN BURTON: Have you been contacted by the
3 Board of Prison Terms?

4 DR. CAMPISI: Yes, we have. We, in fact, have
5 been working with them to help resolve some of their issues.

6 CHAIRMAN BURTON: The State Auditor recommended
7 changing the process for determining severity of disability for
8 the purpose of ensuring more equitable access and to simplify
9 what some think is a complex system.

10 Are you taking any steps toward this end, and
11 when do you think you'll be completed?

12 DR. CAMPISI: Yes, we are. We already have taken
13 some steps which simplified the process, but we have a work
14 group, which is very actively working on this effort. We have a
15 draft of a new proposal which we are currently sharing with our
16 stakeholders, our advisory groups for people with different
17 disabilities.

18 It will require a regulation change and a new
19 policy guidance, and training of all of our Department staff.
20 And our timeline to have that done, we have committed both to
21 the Legislature and to DSA, is to have that new process in place
22 no later than April 1st, 2001. And believe me, if it's humanly
23 possible, it will be sooner because I believe this is very
24 important.

25 CHAIRMAN BURTON: Senator Knight.

26 SENATOR KNIGHT: Yes, thank you, Mr. Chairman.

27 Dr. Campisi, the Bureau of State Audits recently
28 released a report on the California vocational rehab. program.

1 They indicated that the Department does not effectively monitor
2 cumulative costs associated with cases, and does not promptly
3 close unreasonable, expensive cases that are unlikely to result
4 in successful employment.

5 They recommend several ways that you could more
6 cost effectively manage. Are you doing anything along these
7 lines?

8 DR. CAMPISI: Yes, we are. In our 60-day
9 response, in our presentations to the Legislature, we outlined a
10 whole series of items that we're doing.

11 We have increased our management information
12 reports to the district to let them monitor costs on an ongoing
13 basis. We also are looking at going back and analyzing a
14 significant number of cases to see where there are factors, and
15 variables, and red flags that we can then teach our counselors,
16 and particularly the supervisors who review the counselors'
17 work, to be sort of red flags as to when the services need to
18 move in another direction, and also to review and make it clear
19 to our staff that when services have been provided, alternatives
20 tried, that there is an appropriate time to close a case if
21 people are not successful.

22 We're also doing a lot of work both internal to
23 our system and external in other states of trying to identify
24 best practices for cost monitoring, and particularly for job
25 development and placement, to better get more people into jobs.

26 SENATOR KNIGHT: Very good, thank you.

27 DR. CAMPISI: Thank you.

28 CHAIRMAN BURTON: Senator Hughes.

1 SENATOR HUGHES: She answered all the questions I
2 even thought of. Thank you.

3 DR. CAMPISI: You're welcome.

4 CHAIRMAN BURTON: Have you ever thought of
5 serving on the Board of Prison Terms?

6 [Laughter.]

7 CHAIRMAN BURTON: We've got jobs for you that go
8 this high.

9 Do you have any family present?

10 DR. CAMPISI: Yes, I do. My 86-year-old mother
11 is here and my husband as well.

12 CHAIRMAN BURTON: Would you please stand.

13 DR. CAMPISI: I would like to say, my mother's
14 been a wonderful mentor and role model. Without my family, I
15 would not have been successful.

16 CHAIRMAN BURTON: Thank you.

17 We have witnesses in support.

18 MS. BRADLEY: Good afternoon. I'm Carol
19 Bradley. I'm here representing the California Foundation for
20 Independent Living Centers.

21 We represent 24 centers, Independent Living
22 Centers, empowering people with disabilities across the State of
23 California.

24 We are in support of Dr. Campisi's appointment.
25 We believe she exemplifies the range of experience and
26 professionalism that will greatly benefit California and the
27 Department.

28 Thank you.

1 MS. MCPARTLAND: My name is Pat McPartland. I'm
2 representing the Californians for Disability Rights, which is
3 the oldest and largest grassroots membership association of
4 persons with disabilities in California.

5 And we are very much in support of Catherine
6 Campisi as Director of Rehabilitation. I've worked personally
7 with Catherine for many years on a wide variety of projects, and
8 she is -- she exemplifies leadership and administrative
9 competence.

10 And I think she's a wonderful choice for Director
11 of Department of Rehabilitation.

12 Thank you.

13 MR. KAISER: Yes, my name Dan Kaiser. I am
14 representing the President of the California Council of the
15 Blind and our membership as well.

16 And we really support the confirmation of
17 Dr. Campisi. We feel that she's very cognitive of the needs of
18 the blind and visually impaired in California.

19 And the main thing is, we think she'll do her
20 darnedest for us, and she'll do her best. So, that's all I have
21 to say.

22 CHAIRMAN BURTON: Thank you, sir.

23 Next.

24 MR. WILLOWS: Mr. Chairman, Members of the
25 Committee, my name is Jim Willows. I'm President of the
26 National Federation of the Blind of California.

27 We have submitted a letter to the Committee. The
28 letter is in strong support of Dr. Campisi's confirmation.

1 In the letter, I stressed her experience in
2 working with people with disabilities, the fact that she herself
3 is disabled, the fact that she has a great deal of experience in
4 state government.

5 We feel that she is definitely a person who
6 should be confirmed for this position, and we urge your support.

7 Thank you.

8 CHAIRMAN BURTON: Thank you, sir.

9 MS. SHADD: Good afternoon. I'm Vicki Shadd. I'm
10 here on behalf of Work Ability I, which is a vocational
11 transition program for youth with disabilities.

12 We strongly endorse the appointment of Catherine
13 Campisi to the State Director position. We're looking very
14 forward to some strong collaborative efforts between the
15 Department of Rehabilitation, the California Department of
16 Education, and the Work Ability I Programs around the state
17 under her leadership.

18 It's exciting to have her as a partner in
19 something that we feel is so important in preparing youth with
20 disabilities for adult life.

21 Thank you.

22 MR. HANSEN: Mr. Chairman, Members, Dwight
23 Hansen, representing 130 community-based private, nonprofit
24 agencies serving people with developmental disabilities. The
25 California Rehabilitation Association strongly supports
26 Catherine Campisi.

27 Over the last several years, the Department has
28 earned, I think, a bit of skepticism on the part of the

1 administration and the Members of the Legislature. They have
2 not had a good record of accurately projecting to you their
3 budget needs, and that results often in threats of lack of
4 service for people with developmental disabilities in the
5 community.

6 Since Catherine's arrival in January, however,
7 there is a new wind blowing, and we have every bit of confidence
8 in Catherine's ability to get this very important Department
9 under control.

10 Even as we speak, however, there's legislation
11 going through that the Department of Finance and others are
12 promoting that could be devastating. We're hoping that the
13 administration as a whole would give Dr. Campisi an opportunity
14 to get her arms around the Department, and allow her to correct
15 some of these problems.

16 CHAIRMAN BURTON: What legislation?

17 MR. HANSEN: In particularly, in the area of
18 supported employment, over the last couple of years we have been
19 very successful in finding jobs --

20 CHAIRMAN BURTON: No, what is the bill?

21 MR. HANSEN: The bill is AB 644, and what it
22 would do would be reduce the rate paid to those who provide
23 supported employment services unless the Department meets its
24 budget projections.

25 The problem is, the Department has been
26 inaccurate in its budget projections. They simply do not have
27 the technology in place to do good projections.

28 CHAIRMAN BURTON: Do you know who the author is?

1 MR. HANSEN: It's the Assembly Budget Committee.

2 CHAIRMAN BURTON: So, that's what the
3 administration's doing for you. Welcome to state government.

4 DR. CAMPISI: We are working with them, and we
5 feel confident that we will be able to have accurate
6 projections. We're working very diligently.

7 CHAIRMAN BURTON: I guess it's from the Assembly
8 Budget Committee, it will come here, but make sure that you let
9 us know if there are some problems, because, you know, we would
10 like to give you a fair chance to do the job before they change
11 on how the job should be done.

12 Hopefully, the Governor had the faith and
13 confidence to put you in charge, so he certainly ought to be
14 able -- maybe this is just one of the Department of Finance's
15 ways of trying to save money without thinking about what the
16 impact would be.

17 It would be very helpful if -- who is the
18 Department's lobbyist over here? Do you have one?

19 DR. CAMPISI: Scott Silva is our Assistant
20 Director for Legislation.

21 CHAIRMAN BURTON: Okay, well, just make sure they
22 keep us apprised; okay?

23 DR. CAMPISI: Absolutely.

24 MR. HANSEN: Thank you, Senator. We have every
25 confidence that Dr. Campisi can do this job, and we endorse her
26 strongly.

27 CHAIRMAN BURTON: Thank you.

28 Other witnesses.

1 Tell me that's not Lynda Bardis.

2 MS. BARDIS: It's not Lynda Bardis.

3 CHAIRMAN BURTON: Looks like Lynda Bardis.

4 MS. BARDIS: Hi, it's been a long time.

5 Mr. Chairman and Members of the Committee, I'm
6 Lynda Bardis, and I'm here --

7 [Laughter.]

8 MS. BARDIS: You got me. This is a new
9 incarnation, however.

10 I'm here representing Disabled in State Service,
11 a recognized employee association. I'm here to express our
12 enthusiastic support of Catherine's confirmation for two
13 essential reasons.

14 As a person with a significant disability,
15 Catherine is intimately aware of all of the issues related to
16 facing life with a disability. And she has worked -- she has
17 dedicated her life. She has worked tirelessly for improvement
18 of opportunity for persons with disabilities, all opportunities:
19 to access to the physical environment; access to information
20 highway; access to financial independence through employment.

21 Secondly, Catherine has held high level positions
22 in two major state agencies. During that time, she has gained
23 incredible experience and skill in maneuvering around the
24 vicissitudes of state government, and knowing how to be an
25 effective, and strong, and powerful leader in that context.

26 We think that this is an invaluable and unique
27 combination, and that Catherine will be a strong, successful,
28 effective leader that will make the administration and the

1 Legislature, and all of us in California, proud.

2 Thank you very much.

3 CHAIRMAN BURTON: You're the only person been
4 around here longer than me, Lynda.

5 MS. BARDIS: Just about the same length of time.

6 CHAIRMAN BURTON: The same length of time.

7 MS. GUTIERREZ-GARZA: Good afternoon. I'm Irene
8 Gutierrez-Garza. I am Vice President of Cafe de California,
9 and I come here as Co-Chair of the California Coalition of
10 Minorities, Women and Disabled Persons.

11 There's not much more I can say than what has
12 already been said, but we strongly support her appointment
13 because of all the things that she's achieved and done, and
14 she's capable of, we feel that she has total commitment to the
15 total community. And I feel that it had to be said, and that's
16 all.

17 Thank you.

18 CHAIRMAN BURTON: Other witnesses in support.

19 MR. DeLEONARDIS: Good afternoon, Chairman
20 Burton and Members of the Committee.

21 My name Dave DeLeonardis, and I am representing
22 CASRA, the California Association of Social Rehabilitation
23 Agencies. CASRA's a statewide association composed of 37
24 nonprofit providers of mental health and vocational
25 rehabilitation services. Many of the member organizations have
26 been contractors to the Department of Rehabilitation for more
27 than a decade.

28 We are intimately familiar with the Department,

1 its history, its successes, and its current challenges. Today,
2 the Department of Rehabilitation needs strong leadership. It
3 needs a leader with an unfailing commitment to the mission of
4 the Department, with vision, creativity, and the ability to
5 forge the crucial partnerships, both within and outside the
6 Department that will be strategic to its success.

7 We believe Ms. Campisi has these qualities. We
8 therefore offer unqualified support for her appointment as the
9 Director of the Department of Rehabilitation.

10 Thank you.

11 CHAIRMAN BURTON: Other witnesses in support.

12 MR. SEATON: Good afternoon. My name Sam Seaton.

13 I'm here representing the Department of Rehabilitation, State
14 Rehabilitation Council.

15 As Vice Chair, I'm here to tell you on behalf of
16 our Council how strongly we do support Catherine's nomination to
17 the Director of Rehabilitation.

18 Our past experiences when Catherine was in the
19 Department, she was involved with our Council, and was very
20 creative, and showed a great deal of leadership. We're looking
21 forward to working again with her very closely in the future.

22 Thank you.

23 MS. MUTTI [Through Interpretor]: Hello, my name
24 is Sheri Farinha Mutti.

25 And Catherine knows I don't have a male voice, of
26 course.

27 I'm here representing the California Association
28 of Agencies Serving the Deaf and Hard of Hearing, eight

1 community-based organizations, nonprofit, under the Department
2 of Social Services, serving the deaf and hard of hearing
3 individuals throughout all 58 counties.

4 We're proud to be here, a part of this meeting,
5 to support Dr. Catherine Campisi. Catherine herself has worked
6 throughout her life -- a very long learning experience, and a
7 proof of support -- to improving the lives of persons with
8 disabilities for the past 20 years, she's been doing that. She
9 herself is a role model to show that a person with a disability,
10 when given equal access to employment opportunities, can achieve
11 an appointment to a high level of government position.

12 Catherine herself is a teacher and trainer in
13 education, technology, and a role that the Department of Rehab.
14 should play as we move forward to improve access to work
15 opportunities for persons who are deaf or have disabilities.

16 I applaud the Governor of California for
17 appointing Catherine Campisi. There may be other individuals
18 who are qualified for that position; however, picking a person
19 who is most qualified and also disabled gives me hope that we
20 are finally moving in the right direction. There are no others
21 who can speak for, do for, and be pro-active, provide services
22 to persons who themselves are deaf and disabled, than persons
23 who are therefore disabled themselves.

24 It makes me proud to be a citizen of this state,
25 a working mother, and a wife, and a taxpayer, whose dollars will
26 go toward people like Catherine Campisi's leadership, leading
27 the state and advocating for everyone.

28 ADA is a law that we must continue to protect,

1 especially when you're talking about the Board of Prisons. I
2 expect this state to stand by this small window that has allowed
3 us the opportunity to be on somewhat of an equal keel with our
4 hearing and able bodied peers.

5 Best wishes for your official appointment,
6 Catherine, and you can count on me standing by your side and
7 working with you to reach the goals.

8 Thank you.

9 CHAIRMAN BURTON: Thank you.

10 Any others?

11 DR. HEYERICK: Good afternoon. I'm Dr. Jeanne
12 Heyerick. I'm with the Brain Injury Association of California.
13 We are the not-for-profit, all volunteer organization which
14 serves all of California's citizens with acquired and traumatic
15 brain injuries.

16 We're happy to be here today in support of
17 Dr. Campisi. We recognize that she fully well knows and
18 understands that many of California's disabled populations have
19 been long underserved and overlooked. And we believe that
20 Dr. Campisi will, in fact, take a look at the equal right of all
21 of California's population with disability, including those with
22 traumatic brain injury, and will work towards giving them better
23 quality to their lives as well.

24 Thank you.

25 CHAIRMAN BURTON: Thank you.

26 Next.

27 MR. HUYEK: Senator Burton and Committee Members,
28 my name is Jim Huyek. I'm the Executive Director of Alta

1 California Regional Center here in Sacramento.

2 For the disability community, one of the most
3 critical appointments is the Director of the Department of
4 Rehabilitation. As the current Executive Director of Alta
5 California Regional Center, and a previous rehabilitation
6 counselor of the Department of Rehab, I'm well aware of the
7 impact that such an agency has on the lives of individuals with
8 disabilities.

9 The Director of the Department of Rehabilitation
10 plays the pivotal role in providing the leadership to the
11 agency that will determine the effectiveness of that
12 organization.

13 I have known Catherine for over 20 years, both
14 professionally and personally. I have the highest regard and
15 respect for both her commitment to persons with disabilities,
16 and her knowledge, experience, and ability to administer and
17 lead. I have been in the field of disabilities over 25 years,
18 and there is no professional for whom I have a higher regard
19 than Catherine.

20 I had the pleasure of working as a colleague of
21 Catherine's, both in the Disabled Students Services Program at
22 San Diego Community College District, as well as at the
23 California Community College Chancellor's Office. I consider
24 her one of the most outstanding people in the field.

25 Without reservation, I recommend Dr. Catherine
26 Campisi for the position of the Director of the Department of
27 Rehabilitation. She has extensive background in the variety of
28 programs directly related to rehabilitation services. Catherine

1 has exceptionally broad experience in disability services in the
2 public sector, and will make a significant contribution to the
3 Department Of Rehabilitation and to the lives of persons with
4 disabilities.

5 CHAIRMAN BURTON: Are there any witnesses in
6 opposition?

7 SENATOR HUGHES: There dare not be.

8 CHAIRMAN BURTON: Senator Hughes moves.

9 SENATOR HUGHES: It's with great enthusiasm. I
10 don't know when I have been as excited as I am about moving this
11 nomination, because we have someone who lives the life of the
12 disabled person and gives hope that all people can be able to
13 cope and achieve as she has. She's an enthusiasm for all of us
14 who are sitting up here who are mentally disabled.

15 But it's with great enthusiasm that I move the
16 nomination.

17 What I like about her the most is, she knows how
18 to spell my first name correctly.

19 CHAIRMAN BURTON: You left the "h" off.

20 Call the roll.

21 SECRETARY WEBB: Senator Hughes.

22 SENATOR HUGHES: Aye.

23 SECRETARY WEBB: Hughes Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator O'Connell.

26 SENATOR O'CONNELL: Aye.

27 SECRETARY WEBB: O'Connell Aye. Senator Burton.

28 CHAIRMAN BURTON: Aye.

1 SECRETARY WEBB: Burton Aye. Four to zero.

2 CHAIRMAN BURTON: Congratulations. It
3 absolutely was a pleasure, believe me.

4 DR. CAMPISI: Thank you.

5 CHAIRMAN BURTON: Thank you. If you've got any
6 clones floating around, send them.

7 Sam Schuchat, Fish and Game, representing the
8 public.

9 Senator Perata's here in lieu of Judge Newsome,
10 who's over in Africa.

11 SENATOR PERATA: Thank you, Mr. Chairman,
12 Members.

13 I, too, am representing the public. As you
14 probably can read for yourself in Sam's biography, he is
15 eminently qualified for this position. I'm just pleased that
16 someone with his background is willing to serve on the Fish and
17 Game Commission.

18 I know him two-fold. One, as constituent of
19 mine, who didn't happen to be at home when I rang his doorbell,
20 but nonetheless, assured me that he'd cast a vote.

21 Secondly, and probably of equal or greater
22 importance, he has spent a number of years in the direct
23 advocacy for the resources in this state and in this country.

24 As the Executive Director, first, in the
25 California CLCV, Sam brought a keen understanding of advocacy,
26 of the need to understand many points of view before arriving at
27 a decision. And in every instance when I was aware of the
28 decision he made, it was made in an informed, intelligent way,

1 but a way that cast an eye towards the future and a
2 responsibility for the past.

3 So, I look forward to his work on the
4 Commission. I'm proud to present him here to you today.

5 I also want to make mention of the fact,
6 Mr. Chair, that Senator O'Connell's doing a fine job
7 representing Joe Baca, a fine job.

8 [Laughter.]

9 CHAIRMAN BURTON: Some guy was up here testifying
10 that he's with the Baca Group.

11 MR. SCHUCHAT: Thank you, Don.

12 Mr. Chairman and Senators, good afternoon. It's
13 an honor for me to be here as you consider confirming my
14 appointment to the Fish and Game Commission.

15 As you know, I've been serving since October, and
16 I wanted to share with you a few of my thoughts about the
17 Department and the Commission.

18 There are three areas that I'm interested in
19 working on during my tenure.

20 First of all, as you know, the Department issues
21 over -- about a million hunting and fishing licenses to
22 Californians every year. This is the source of about a third of
23 our budget. The Department has been involved for sometime in
24 the process of modernizing and rationalizing our computer
25 systems. I'm very interested in that. Computers and the
26 Internet have revolutionized retailing, and I think it's very
27 important that our Department provide the highest possible level
28 of service to our customers and our constituents. And I think

1 that over time, in addition to making folks happy, there'll be
2 some additional revenues for us if we implement these things
3 properly.

4 I'm also very interested in making sure that the
5 Department has, in general, the revenues it needs to do its job.
6 Hunting and fishing revenues have been declining and have not
7 been keeping pace with California's population growth. The more
8 people we have in this state, the harder it is to do what we
9 need to do to protect our fish and wildlife resources.

10 I think there is some private sector
11 possibilities for us, and of course, I don't think that's
12 sufficient. I think there'll be the need for public sector
13 resources here as well.

14 Finally, and I think most importantly, we all
15 know that our population is growing by leaps and bounds. What I
16 realized pretty quickly after I started was that despite the
17 name of the Department, we actually regulate people, not fish
18 and game. The more people we have, the tougher a job we have.
19 And the job is much more complicated than it was a hundred years
20 ago.

21 Once upon a time, Californians fished and hunted
22 and camped. Now, they wind surf, and sea kayak, and spear fish,
23 and snorkle, and bird watch, and river raft. They do all of
24 those activities. Those activities have impacts on wildlife.

25 Keeping what we have and, hopefully, restoring
26 some of what we've lost is the core concern of mine on the
27 Commission. And I'm looking forward to working with the
28 Department and with all of you to accomplish that.

1 Thank you.

2 CHAIRMAN BURTON: Senator Knight.

3 SENATOR KNIGHT: Okay.

4 Mr. Schuchat, the Commission determines which
5 animals and plants are placed on the Endangered Species List or
6 are listed as threatened under the California Endangered Species
7 Act.

8 What criteria do you use in order to put those on
9 the Endangered Species Act or list?

10 MR. SCHUCHAT: I think that the law is pretty
11 clear about what the criteria are.

12 Listings come to us sort of willy-nilly. Anyone
13 can petition us to list a species, and then the Department takes
14 a look at it and gives us a recommendation.

15 SENATOR KNIGHT: When you say they look at it,
16 what do you do?

17 MR. SCHUCHAT: They look at what's the status of
18 the species, what was its historical, biological distribution,
19 what direction is the species headed in.

20 I think that the biggest challenge for us is to
21 figure out how to help species before they get to the point of
22 needing to be listed. Because typically, when a listing comes
23 to us, it's pretty late in the game for whatever the creature
24 is.

25 And I know this is a big problem with our
26 fisheries. We have a number fisheries stocks that have marched
27 right up to the brink.

28 SENATOR KNIGHT: When somebody comes in and asks

1 to have a species listed, what do you physically do?

2 MR. SCHUCHAT: What's the process?

3 SENATOR KNIGHT: Yeah, that's what you physically
4 do.

5 CHAIRMAN BURTON: Well, sometimes it's mental.

6 MR. SCHUCHAT: We're given a petition to consider
7 listing a species. If the Commission accepts the petition,
8 then there's a time period during which the species is
9 evaluated. At the end of that time period, then we decide
10 whether or not the species is worthy of listing.

11 SENATOR KNIGHT: Do you actually go out and
12 survey the area for the species?

13 MR. SCHUCHAT: The Department does. We
14 physically don't.

15 SENATOR KNIGHT: But somebody has to --

16 MR. SCHUCHAT: Somebody does, yes.

17 And there's also, there's public comment for the
18 petition, and then during the process of considering the
19 listing, there's more public comment period. People weigh in on
20 either side.

21 SENATOR KNIGHT: When you do determine that there
22 is a problem and the species should be listed on the endangered
23 list, what kinds of boundaries do you lay out to cover that
24 specific species? How do you determine those boundaries?

25 MR. SCHUCHAT: I'm afraid I don't understand the
26 question.

27 SENATOR KNIGHT: Well, a particular animal. And
28 people have indicated that it is an endangered species. And

1 somebody has got to indicate what the habitat is of that
2 species, where it lives.

3 MR. SCHUCHAT: Do you mean where is the species
4 found?

5 SENATOR KNIGHT: Yeah, and so now you have the
6 problem of determining or establishing a boundary for that
7 habitat, and how do you do that?

8 MR. SCHUCHAT: Well, that's done by the
9 Department's biology staff. I think that they look at both
10 where the species is now and also where it's been found
11 historically.

12 I think it's -- the process is different with
13 every species. Some things are much harder to figure out than
14 others. Fish stocks, in particular, because they're seasonal,
15 and they move around a lot, that's tough.

16 SENATOR KNIGHT: You know they've got to be in
17 the water someplace.

18 MR. SCHUCHAT: Some place, yes, hopefully.

19 But I think there's no single answer for that. I
20 mean, I think it varies, species to species.

21 SENATOR KNIGHT: One other question.

22 And whether you have the capability or not, would
23 you endorse or support free fishing license for seniors 70 years
24 old and older?

25 SENATOR PERATA: Oh, absolutely. Kind of like
26 teachers.

27 SENATOR KNIGHT: I didn't ask you.

28 SENATOR PERATA: Seems like a really good

1 political issue. Thought I'd get in front of it.

2 [Laughter.]

3 MR. SCHUCHAT: If my State Senator is for it, who
4 am I to stand in the way?

5 I think that's an interesting idea. I think it's
6 worth taking a look at.

7 CHAIRMAN BURTON: Didn't Henry Mello, wasn't that
8 one of his big deals that never happened?

9 SENATOR O'CONNELL: Gary Condit had that bill for
10 years.

11 CHAIRMAN BURTON: At least you're getting it up
12 to 70 now. You know, 65, 66, 67, are young men.

13 SENATOR KNIGHT: Yeah, you're right.

14 Okay.

15 CHAIRMAN BURTON: Senator Hughes.

16 SENATOR HUGHES: I wasn't going to display my
17 ignorance, but this is the only way I'm going to learn.

18 I've never applied for a hunting or fishing
19 license. If I wanted to, what do I do, other than make out a
20 form?

21 And how am I kept informed about what is on the
22 Endangered Species List? How does your Department keep it us up
23 to date?

24 MR. SCHUCHAT: You get these licenses, typically,
25 at a bait shop or an outdoor equipment store. You apply.

26 When you get your license, depending on what it
27 is, you are given a rule book, essentially, which changes every
28 year.

1 The rules, particularly for fishing, are
2 Byzantine. It's a pretty thick little paperback, with little
3 tiny type.

4 Then, for certain kinds of species, you have to
5 get -- they're called different things. In the hunting world,
6 you get different tags for different kinds of creatures,
7 different times of year.

8 For certain kinds of fish, you have to get an
9 additional special permit. You have to do it every year.

10 The rules are very complicated. The Department
11 puts out a lot of material explaining them.

12 SENATOR HUGHES: All right, you brought up a very
13 good point. You said that the rules are really in tiny type.
14 So, I would think a lot of retirees are seniors, and they would
15 be the ones that have the luxury of fishing and hunting when
16 they so desire.

17 Are you going to think about recommending that
18 these rules be printed in bolder type to help the people who
19 might, you know, unconsciously, violate the laws because they
20 haven't read this and assume that they know what those words
21 mean on the line? Are you thinking about that?

22 MR. SCHUCHAT: Yeah. I think this stuff should
23 be on the Web.

24 SENATOR HUGHES: But then, some seniors aren't
25 into computers either.

26 What about the little book? You don't give them
27 their computer to take home.

28 CHAIRMAN BURTON: It reminds me of my brother,

1 that everytime I was putting together a piece of political
2 literature, he used to say, "How are the old-timers south of
3 Market going to read this?"

4 Has anybody ever given any thought to it? I
5 mean, I don't know about hunting, but fishing, especially if
6 you're going surf fishing, or anything like that, I have know
7 idea what's complicated about it except maybe baiting the hooks.

8 Has anybody given any thought to just making this
9 stuff rather simple?

10 MR. SCHUCHAT: My understanding is that we've
11 gone through cycles of complexity and simplification.
12 Hopefully, we're going to start working on simplifying now.

13 CHAIRMAN BURTON: I would think. I'm not a
14 hunter, but I don't think anybody ever shoots a snail darter
15 anyway. You know, most of the stuff on the Endangered Species
16 list, unless you step on it by accident, you're not going to be
17 shooting it.

18 Again, fishing, I would guess, except for the
19 limits in the season, there isn't a hell of a lot to it.

20 MR. SCHUCHAT: Where you fish, when you fish,
21 what you fish for, what kind of gear you use, how many fish you
22 can keep, how many fish you have to put back, all vary according
23 not just to river, but actually segment of river, portion of
24 beach, depending where you are in the state.

25 And partly, this is because all kinds of
26 different interest groups come to the Commission, and they ask
27 us to do this or that, and things gets more complicated. I
28 think that's the real barrier.

1 I don't hunt, but I have fished, and I've gotten
2 California fishing licenses. The first time I did that, I got
3 the booklet, and I was terrified. I was sure that I was going
4 to break the law.

5 SENATOR HUGHES: At least you could read it.

6 MR. SCHUCHAT: At least I could read it.

7 SENATOR HUGHES: Yes. Are you going to think
8 about the question that you brought up? I didn't bring it up.

9 CHAIRMAN BURTON: Tell him to do it.

10 SENATOR HUGHES: All right.

11 Mr. Burton and I want you to do it.

12 MR. SCHUCHAT: Okay.

13 CHAIRMAN BURTON: Tell Bob Hight that really,
14 this stuff shouldn't be -- I guess when I was fishing, it was
15 less complicated, but especially if you're out surf fishing in
16 the Bay and off the beaches, it shouldn't seem much.

17 I guess have a separate one for each, you know,
18 Feather River between Hartman's Bar and Oroville, you know, you
19 got to do this.

20 You could have a whole bunch of them, maybe sell
21 ads in them, Sullivan's Bait Shops, stuff like that.

22 MR. SCHUCHAT: Our Executive Officer, Bob
23 Trainer, is here. And one of my fellow Commissioners, Mike
24 Flores, so we'll get right on it.

25 SENATOR HUGHES: So, if it's not done, it's his
26 fault; right?

27 MR. SCHUCHAT: Correct.

28 SENATOR KNIGHT: Don't forget the 70-year-old

1 free license.

2 MR. SCHUCHAT: Okay.

3 CHAIRMAN BURTON: We're getting back to those
4 vets and Board of Prison Terms guys.

5 SENATOR O'CONNELL: Is it true that the reason
6 you weren't home when Senator Perata knocked on your door is
7 because you knew he was coming? Any truth to that.

8 [Laughter.]

9 MR. SCHUCHAT: I was probably out campaigning for
10 somebody else.

11 SENATOR O'CONNELL: His opponent?

12 MR. SCHUCHAT: Never, never.

13 CHAIRMAN BURTON: Do have family here?

14 MR. SCHUCHAT: Unfortunately, I don't. I do have
15 a few friends left.

16 CHAIRMAN BURTON: Witnesses in support, Corey,
17 are you going sit there or come up?

18 MR. BROWN: Hi, Mr. Chairman and Members of the
19 Committee, Corey Brown with Trust for Public Land.

20 I've known and worked with Sam for nearly a
21 decade. Great respect for him. He's very smart; he's very
22 dedicated to public policy. He knows resource issues up and
23 down the state. He'll make an excellent addition to the Fish
24 and Game Commission.

25 We urge you to confirm.

26 CHAIRMAN BURTON: Other witnesses in support.

27 MR. GAINES: Mr. Chairman, Members of the
28 Committee, my name is Bill Gaines. I'm the Director of

1 Government Affairs for the California Waterfowl Association.

2 As a conservation organization dedicated to the
3 preservation and enhancement of California's waterfowl wetlands
4 and the protection of our supporting heritage, we watch the
5 activities of the Fish and Game Commission very, very closely.
6 I can assure you that the appointments to that Commission
7 definitely come under the microscope when it comes to our
8 organization.

9 We have 15,000 members statewide. Most of them
10 are duck hunters, not of all of them are duck hunters. But one
11 thing that they all are is, they're waterfowl and wetlands
12 enthusiasts.

13 As the regulatory entity responsible for the
14 preservation and enhancement of California's natural resources,
15 as well as a regulatory entity responsible for setting our
16 seasons and bag limits for gamed species, the Fish and Game
17 Commission is an entity that we work very, very closely with.

18 When Mr. Schuchat was first appointed, we took a
19 hard look at his resume. We had absolutely no prior experience
20 with Mr. Schuchat. As he mentioned earlier during his
21 testimony, he's been on the Commission since October, and during
22 that, say, seven or eight month period, I have attended a
23 variety of Fish and Game Commission meetings on a variety of
24 different topics that were very close to our organization. And
25 I can assure you that he has definitely won over our
26 organization.

27 Clearly, he came into this position with a strong
28 environmental background. We were concerned that he came in

1 without much of a sporting background. But he has proven that
2 he has a strong sensitivity to our issues, and that he is fair.
3 He's a deep thinker, definitely has a thorough knowledge of CESA
4 and CEQA, which are critical to an important and an effective
5 Commission member.

6 And as we take a look at his performance, if you
7 will, over the last eight months, I am very pleased to be here
8 today and to offer on behalf of the California Waterfowl
9 Association our strong support to the confirmation of Samuel
10 Schuchat.

11 Thank you very much.

12 CHAIRMAN BURTON: Thank you.

13 MS. SADLER: I'm Lynn Sadler with the Mountain
14 Lion Foundation, and we're also here to support Sam.

15 I've known Sam, I think, ten years as well. And
16 I've been to several Fish and Game Commission hearings during
17 his tenure. And the most exciting thing is that he actually
18 brings up issues for us to consider, which I think is the first
19 time that's happened in the twelve years I've been working on
20 wildlife issues.

21 So, we're extremely pleased with how engaged he
22 is in the subject, how well he knows it, how willing he is to
23 study it.

24 We don't agree on everything, probably going to
25 disagree on more things, but we really appreciate the fact that
26 he is on the Commission and heartily support him.

27 CHAIRMAN BURTON: Witnesses in opposition?

28 SENATOR HUGHES: I'd like to move the nomination

1 on behalf of seniors.

2 CHAIRMAN BURTON: Call the roll.

3 SECRETARY WEBB: Senator Hughes.

4 SENATOR HUGHES: Aye.

5 SECRETARY WEBB: Hughes Aye. Senator Knight.

6 SENATOR KNIGHT: Aye.

7 SECRETARY WEBB: Knight Aye. Senator O'Connell.

8 SENATOR O'CONNELL: Aye.

9 SECRETARY WEBB: O'Connell Aye. Senator Burton.

10 CHAIRMAN BURTON: Aye.

11 SECRETARY WEBB: Burton Aye. Four to zero.

12 CHAIRMAN BURTON: Thank you, Sam.

13 MR. SCHUCHAT: Thank you, Senators.

14 [Thereupon this portion of the

15 Senate Rules Committee hearing was

16 terminated at approximately 2:57 P.M.]

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APPEARANCES

MEMBERS PRESENT

1 SENATOR JOHN BURTON, Chair

2 SENATOR JOHN LEWIS, Vice Chair

3 SENATOR TERESA HUGHES

4 SENATOR WILLIAM KNIGHT

5 SENATOR JACK O'CONNELL

STAFF PRESENT

6 GREG SCHMIDT, Executive Officer

7 PAT WEBB, Committee Secretary

8 NETTIE SABELHAUS, Consultant on Governor's Appointments

9 WADE TEASDALE, Consultant to SENATOR LEWIS

10 FELICE TANENBAUM, Consultant to SENATOR HUGHES

11 ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

12 DOUGLAS E. LAUE, Chief
13 Bureau of Automotive Repair

14 H. WESLEY PRATT, Director
15 California Conservation Corps

16 DWIGHT WASHABAUGH, President
17 California Association of Local Conservation Corps

18 RICHARD C. RODRIGUEZ
19 Association of Conservation Employees

20 TIM FRIES
21 California Union of Safety Employees

22 ART CASTANARES, on behalf of
23 SENATOR STEVE PEACE

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1 DARRYL W. YOUNG, Director
Conservation

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3 SHANNON EDDY
Sierra Club

4
5 TIM YARYAN
California Association of Resource Conservation Districts

6 BOB HOUSTON
7 Construction Materials Association

8 COREY BROWN
Trust for Public Land

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10 MARK MURRAY, Executive Director
Californians Against Waste

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2
3 CHAIRMAN BURTON: Governor's appointees, Douglas
4 Laue, Chief, Bureau of Automotive Repair.

5 Go ahead, sir.

6 MR. LAUE: Thank you, Mr. Burton.

7 I'm proud and humbled to be here as Chief of the
8 Bureau of Automotive Repair.

9 I was attracted to the public service as a very
10 young man in 1972, because of the formation of this bureau in
11 the then Reagan administration. I have been with the state
12 since then.

13 I spent twelve years as Deputy Chief, and in
14 management positions in the Bureau of Automotive Repair. Most
15 recently, the last seven years as Deputy Director of the Medical
16 Board of California.

17 It is my goal to restore the shining star to this
18 Bureau that it once was eight years ago, and to increase the
19 public's access to our services, and to unleash the enthusiasm
20 that I know that we have on our management, our supervisory, and
21 our rank and file staff there.

22 CHAIRMAN BURTON: You're with the Smog Check
23 program.

24 MR. LAUE: That is part of the Bureau of
25 Automotive Repair; that's correct, sir.

26 CHAIRMAN BURTON: The Smog Check thing, the law
27 requires a minimum of two years' experience or something?

28 MR. LAUE: The regulations as currently --

1 CHAIRMAN BURTON: The law. The regulation goes
2 beyond the law, so we'll go to that.

3 MR. LAUE: That's correct.

4 The law says at least two years of experience or
5 equivalency.

6 CHAIRMAN BURTON: Why does the regulation go to
7 four?

8 MR. LAUE: Well, the regulations adopted prior to
9 my coming here do require four.

10 We have pending regulations right now which
11 reduce the minimum experience requirements to one year.

12 CHAIRMAN BURTON: How are you going to do that if
13 the law says a minimum of two?

14 MR. LAUE: The law says a minimum of two or the
15 equivalent of, and there are equivalent exams that a mechanic
16 can take that, in the belief of our engineering staff, do
17 demonstrate the equivalency.

18 CHAIRMAN BURTON: All right. When was that reg.
19 proposed?

20 MR. LAUE: The regulation was proposed, I
21 believe, in January, and it's wended its way through the
22 process. There are other controversial elements of that
23 regulation, and it will be reheard in late June.

24 CHAIRMAN BURTON: What are the other
25 controversial elements?

26 MR. LAUE: There are regulations regarding the
27 pricing of smog inspections at test-only facilities. The
28 disallowing of a differential price being charged to the public

1 if they are directed to a test-only facility, as opposed to
2 whether they volunteered. And that is a regulation that
3 generated some controversy.

4 CHAIRMAN BURTON: Thank you.

5 Senator Knight.

6 SENATOR KNIGHT: Thank you, Mr. Chairman.

7 Mr. Laue, the Smog Check Two program, do you have
8 anything to do with the boundaries by which we established the
9 Smog Check Two?

10 MR. LAUE: In terms of the geographic boundaries,
11 I believe that was determined by the law and by the request of
12 the local air quality districts.

13 The trouble, as you know, Senator, with drawing
14 any boundary is, you create a boundary problem.

15 SENATOR KNIGHT: But my concern is that I guess
16 that when we drew the boundaries, we said all of L.A. County.
17 That includes the desert area. And I've got places up there
18 where, you know, shouldn't be concerned about Smog Check Two.

19 We have areas identified within the state, like
20 Bakersfield, as a dot on the a map.

21 MR. LAUE: Yes.

22 SENATOR KNIGHT: Fresno, Sacramento.

23 But L.A. County is all of L.A. County.

24 I don't know why I should be a part of L.A.
25 County, concerned with the Smog Check, because we're on the
26 other side of the mountains. We don't have the same problem.

27 MR. LAUE: Senator, I was not around when those
28 boundaries were drawn, so I can't take ownership of that.

1 SENATOR KNIGHT: Is there anything you can do
2 about that?

3 MR. LAUE: I can certainly check into it and see
4 if there's anything within the existing law and regulations
5 which would allow exemptions of additional areas, with the
6 understanding --

7 CHAIRMAN BURTON: I think it needs a statute,
8 because somebody's always trying to put bills in to either bring
9 somebody in or take them out. For what it's worth.

10 SENATOR KNIGHT: I've got a whole lot of area up
11 there that there's nothing. But yet, every farmer --

12 CHAIRMAN BURTON: And we want to keep it that
13 way.

14 SENATOR KNIGHT: Yes, but every farmer out there,
15 though, is required to conform to Smog Check Two. And it says
16 here that you're only effective 40 percent of the time, as you
17 expected under Smog Check Two.

18 MR. LAUE: At the current operations, based on
19 the ARB study, and the Inspection and Maintenance Review
20 Committee, we are somewhere between 50 and 75 percent of the
21 original clean air goal that was set back in 1994, when the
22 program was conceived and designed.

23 I can say, Senator, too, that I've been out in
24 your district. I've done roadsides there. I can tell you two
25 things that are unusually characteristic about the cars from
26 your district.

27 First of all -- and this is where the Highway
28 Patrol pulls them over, and we do a voluntary inspection, smog

1 inspection of the cars. First of all, they're very high mileage
2 for model years. I remember that very distinctly.

3 And also, even brand-new cars were quite high
4 mileage.

5 So, just an observation from years ago, being out
6 in Palmdale-Lancaster, and working on those roadsides.

7 SENATOR KNIGHT: What's that got to do with it?

8 CHAIRMAN BURTON: He's trying to establish a
9 little camaraderie; I'm not a bad guy; I know your district; it
10 didn't happen on my watch, but I can look into it and find out.

11 [Laughter.]

12 SENATOR KNIGHT: Let me banter with him as
13 well, will you?

14 CHAIRMAN BURTON: Be my guest.

15 MR. LAUE: I'm appreciative of that, but it's
16 also that smog is a product not only of the instantaneous
17 pollution, but the vehicle miles driven of a car. So, a vehicle
18 that's driven a lot more miles has the opportunity to pollute a
19 lot more than a vehicle that's simply driven a short distance in
20 an urban area, for example.

21 SENATOR KNIGHT: Okay.

22 CHAIRMAN BURTON: Senator Hughes.

23 SENATOR HUGHES: Are you aware that back in
24 October, this is before you were in charge, we had a Senate
25 informational hearing, and the Bureau's previous director
26 testified that California consumers are paying \$500 million a
27 year in auto repairs that are substandard, dangerously unstable,
28 and some others that had never been done.

1 Did you know about that?

2 MR. LAUE: I am not aware of that specific
3 report.

4 From my dozen years' experience in the Bureau, I
5 am not surprised that there are people still today in California
6 that are the victims of shoddy or even fraudulent repairs.

7 That's why I was attracted to the Bureau. I was
8 a mechanic when I was in high school and in college, so I know
9 the industry also.

10 SENATOR HUGHES: You also know that we had some
11 undercover stings of the auto body repair shops by Bureau
12 investigators that found that fully 40 percent of the charges to
13 consumers were fraudulent?

14 MR. LAUE: Yes.

15 SENATOR HUGHES: What are going to do about that?

16 MR. LAUE: It's my understanding that Ms. Speier,
17 Jackie Speier, Senator Speier, is carrying a bill which would
18 establish a program whereby we would inspect thousands of
19 vehicles that have undergone auto body repair, document the
20 problems that we find, and also seek remedies for the consumers.

21 SENATOR HUGHES: But the bill isn't law yet. So
22 before that happens, are you going to do anything on your own,
23 innovative or creative, to protect the consumer?

24 MR. LAUE: Already have, as a matter of fact.
25 Our Consumer Protection Division has been briefed twice on the
26 auto body problems that we've seen. We have some major cases
27 coming in this area.

28 It's a, if I can use an adjective, it's shameful,

1 the findings of that study.

2 CHAIRMAN BURTON: Thank you.

3 Any other questions?

4 Senator Hughes moves.

5 SENATOR HUGHES: That's right.

6 CHAIRMAN BURTON: Do you have any family here
7 you'd like to introduce.

8 MR. LAUE: No, sir.

9 CHAIRMAN BURTON: Do we have anyone in support?
10 Anyone in opposition?

11 Senator Hughes moves. Call the roll.

12 SECRETARY WEBB: Senator Hughes.

13 SENATOR HUGHES: Aye.

14 SECRETARY WEBB: Hughes Aye. Senator Knight.

15 SENATOR KNIGHT: Aye.

16 SECRETARY WEBB: Knight Aye. Senator O'Connell.

17 SENATOR O'CONNELL: Aye.

18 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

19 SENATOR LEWIS: Aye.

20 SECRETARY WEBB: Lewis Aye. Senator Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Five to zero.

23 CHAIRMAN BURTON: Congratulations.

24 MR. LAUE: Thank you, sir. Thank you so much.

25 CHAIRMAN BURTON: Take some of your vacation
26 time, drive up to Lancaster and go out 111.

27 What is that highway? Is that 111 to Lancaster?

28 SENATOR KNIGHT: Highway 14 is the freeway.

1 CHAIRMAN BURTON: What is the one, when you come
2 off the old Grapevine, you come up, and then you shoot off into
3 that wonderful --

4 SENATOR KNIGHT: Route 138 is the one.

5 CHAIRMAN BURTON: Whatever it was, it was a
6 wonderful ride, Pete.

7 SENATOR KNIGHT: It's a death trap any more.

8 CHAIRMAN BURTON: We'll get a chance to ask the
9 new Caltrans guy about that.

10 Wesley Pratt, CCC.

11 Welcome, sir.

12 MR. PRATT: Thank you.

13 Good afternoon, Chairman Burton and Members of
14 the Senate Rules Committee.

15 It's an honor to seek confirmation as director of
16 the CCC. I believe the new millenium presents a tremendous
17 opportunity to build on the CCC's history, and strengthen the
18 organization as we empower our Corps members by preparing them
19 for the future in educational and employment opportunities, in
20 both the public and the private sector, while also preserving
21 our natural environment.

22 I'm placing a renewed emphasis on a commitment to
23 the CCC mission of developing young adults by effectively
24 improving the work ethic, offering quality educational
25 opportunities, and developing work projects that provide
26 employable skills as we preserve and protect our state's natural
27 resources and environment.

28 While we are in the Resources Agency, and

1 resource conservation work provides a vehicle, our focus remains
2 on developing our most valuable resource, which is our young
3 people.

4 The post-2000 CCC will continue with disaster
5 response mandates and activities, fighting fires, floods, and
6 responding to emergencies whenever needed in the state. As a
7 matter of fact, we've got two crews, probably about 40 Corps
8 members, fighting fires and providing logistical support down in
9 Riverside County and Inyo County.

10 And you've probably read in the paper about the
11 glassy-wing sharp shooter. We have young men and women who are
12 actually participating in trying to ascertain the visual
13 inspections of some of the wineries in Porterville and in Lodi.

14 We shall improve our emergency response
15 capabilities through additional training opportunities and
16 improved public awareness of our efforts.

17 In addition, we want to ensure that our Corps
18 members can compete in the computer age as well. We will
19 provide computer training, computer ownership opportunity, as
20 well as develop Corps member computer repair and recycling skill
21 capabilities.

22 I will increase the level of private business and
23 corporate support for the CCC by soliciting their active
24 involvement in providing jobs to Corps members who graduate from
25 the Corps with good work ethics and competent, transferrable job
26 skills. We will continue to improve our environmental
27 education, provide college scholarship opportunities, and job
28 training and internship capabilities to ensure access to

1 entry-level employment in public agencies.

2 And this is particularly critical in light of the
3 fact that state service will experience a tremendous attrition
4 in the very near future. And we mean to meet the demand with
5 good entry level employees.

6 Collaboration and cooperation with the local
7 Corps in resource conservation work, education, and community
8 service will be enhanced to the greatest extent possible in
9 order to maximize the opportunities for the young adults we both
10 serve.

11 We'll also document our success while
12 demonstrating that the CCC makes a tremendous and positive
13 difference in the lives of these young people. During the
14 previous administration, a poor economy resulted in a dilution
15 and a diminution of quality work and environmental job training
16 projects for fully prepared Corp members for successful
17 education and job opportunities.

18 As Director, I shall work with our Corps members
19 to develop themselves to serve their communities, and to be role
20 models and mentors to youth in their neighborhoods. Each one
21 teach one will be our mantra for encouraging our Corps members
22 to get involved. They will be encouraged and required to take
23 personal responsibility, to take a look in the mirror, and make
24 that change in their lives and the lives of younger Californians
25 as well, because a poet once wrote, "Everyone has something to
26 give."

27 We started this new millenium process by revising
28 our mission to place an emphasis on Corps member development,

1 and Corps members engaging in meaningful work, public service,
2 and educational activities that promote good citizenship, while
3 at the same time, benefitting our environment, our community, as
4 well as our human resources.

5 In closing, I believe in the Conservation Corps
6 movement, its traditions, and its ability to change lives. The
7 journey to develop the CCC in the new millenium has begun, and
8 your confirmation recommendation today will allow me to continue
9 that journey, and to work with the Legislature, our staff, our
10 Corps members, so that we can meet the various challenges and
11 the new opportunities in the post-2000 era in California.

12 I'd be glad to respond to any questions you may
13 have.

14 CHAIRMAN BURTON: Corps members, I think, at
15 least it was thought that they would asked to make a one-year
16 commitment for most of the programs. And the average length has
17 been, like, I think about five-and-a-half months.

18 What causes that? What can we do to correct it?
19 Is it because it's easier to get, quote, "better jobs" now with
20 the economy, that people are moving out to that?

21 Just comment on that.

22 MR. PRATT: Okay.

23 Probably about 54 percent of our Corps members
24 will leave the program in 5.5 months. Part of the problem
25 associated with that is, they'll be positive termination; 54
26 percent of them will be positive, go on to other employment
27 opportunities. They will go back to school, they'll join the
28 military. And so, those are the positive terminations.

1 A factor that we do have to deal with is our
2 retention issues in relation to continuing our program, which
3 allows them the stability to function. It may very well be that
4 the 12-month period, in light of this great economy that we're
5 experiencing, may be a little bit too long, and perhaps we need
6 to look at six months with an option for six months.

7 But we have found that 50 percent of our Corps
8 members, 500 Corps members a year, will continue throughout that
9 year and take advantage of the programs that we offer,
10 particularly the charter school.

11 CHAIRMAN BURTON: Well, you said that there were
12 positive things, which then I assume there are, quote, "negative
13 things" where kids just drop out because they don't want to be
14 there?

15 MR. PRATT: The drop out -- part of the problem
16 is that some of these Corps members have -- they've dropped out
17 of high school. Probably about 57 percent of them dropped out
18 of high school. They really don't have the type of work ethic.
19 Sometimes they figure the work's too difficult for them. There
20 may be discipline problems.

21 We're working to improve our program to address
22 those particular areas.

23 It's kinds of interesting that when we deal with
24 this program, and never before in its history has it had a case
25 management capability. And so, some of these young people come
26 to the Corps with significant social-related problems. So, in
27 the past, we've never had the capability to really deal with
28 those issues.

1 CHAIRMAN BURTON: Do you have any idea, like
2 going back five years, were most of them going through a whole
3 one-year stretch?

4 MR. PRATT: As I recall, based on the
5 conversations I've had with staff who've been there for a while,
6 they've never really been there the entire year. Generally it's
7 been positive terminations, and they generally move into a
8 different area.

9 CHAIRMAN BURTON: So, it's been roughly a
10 six-month deal?

11 MR. PRATT: Roughly a six-month sort of
12 experience. So, although maybe 500 a year will remain a year or
13 longer, it probably should be modified with a six-month program,
14 with an option to renew another six months.

15 CHAIRMAN BURTON: You talked about case
16 management.

17 Do you do a follow-up to see how the kids do when
18 they get out? Do they go to school? Do they finish school? Do
19 they go to the job, they stay in the job? Do they even have
20 some upward mobility? Is there any tracking, so to speak?

21 MR. PRATT: There has been tracking, but to be
22 perfectly honest with you, it's been so ineffective.

23 Although, we do know, and we contract with EDD
24 and also with the community colleges, so we'll know if they go
25 into the workforce, and in fact out there working.

26 We will develop a methodology to do a better job
27 of documenting that, because we believe that a lot of our Corps
28 members, when they terminate, they terminate in a positive

1 manner, which will also provide additional support.

2 CHAIRMAN BURTON: Well, it might be helpful if
3 you have somebody, assuming it's necessary, go to the Budget
4 Conference Committee and get language in the budget that says
5 EDD and community college, to get a coordinated thing.

6 I think it'd be very beneficial to find out what
7 the success rate is, and how they're doing. That could also
8 help you get more money, because I think it's a program that I
9 think a lot of people think is very worthwhile.

10 I believe the more empirical evidence you have,
11 the better it is.

12 Senator Lewis.

13 SENATOR LEWIS: The Governor's budget includes
14 funding right now for 2550 Corps members. What's the high water
15 mark? What's the largest the Corps ever been?

16 MR. PRATT: Probably about 2500 Corps members.

17 SENATOR LEWIS: Is there like a waiting list to
18 get in?

19 MR. PRATT: No, and over the last three months or
20 so, we've experienced actually a recruitment problem.

21 However, now, over the last three weeks, we've
22 seen an increase in recruitment.

23 So, there's not a waiting list. Part of that may
24 be in fact to a lot of people -- it's kind of interesting --
25 outside the Legislature sometimes, and our sponsors who work
26 with us, a lot of people don't even know the Corps exists.

27 I responded last week to an article that was in
28 the in San Francisco Chronicle, a letter to the Editor, where

1 the gentleman was requesting that a program like ours be
2 established. So, I responded, indicating that in fact we were
3 established.

4 CHAIRMAN BURTON: Obviously, nobody's ever talked
5 to Tony Kline. Everytime he talks, he acts like it's the first
6 time he's ever talked to you about it. Instead of telling me
7 what he wants, he goes through the history.

8 SENATOR LEWIS: What's the total budget from all
9 sources for the Corps?

10 MR. PRATT: From all sources, the total budget is
11 about \$80 million. About \$51 million of that is General Fund.

12 CHAIRMAN BURTON: Senator Hughes.

13 SENATOR HUGHES: Do you have any innovative,
14 creative, new ideas is for the California Conservation Corps?
15 It's been around a while. What is your approach?

16 MR. PRATT: Well, I think basically part of it
17 has been to be a marketing effort that really attracts Corps
18 members. And although these Corps members, age 18 to 23 now,
19 are of the MTV generation, they have to realize and understand
20 that there is -- and they do realize; there's a notion of
21 service.

22 Now, I've read some surveys recently where
23 youngsters in that age range, they may not want to be involved
24 in the political process or the governmental process, or vote,
25 or anything like that, but they want to do service. They want
26 to serve, and they'll work on various projects in their various
27 neighborhoods. So, we're promoting, as part of our mission, the
28 idea of service.

1 I'm also very much interested in developing our
2 educational program to the extent that we improve our
3 environmental education effort, as well as look at the whole
4 area of computers, computer repair. We have a program in our
5 Greenwood facility center, where youngsters are actually
6 repairing computers, rehabilitating them, and they're putting
7 them back into the system.

8 We're also looking at the possibility of computer
9 recycling. That's an area that hasn't really been tapped into
10 yet. We can monitor that, perhaps, having hazardous waste
11 materials in those units. But that whole computer repair,
12 computer processing area is an area we're working to see if our
13 Corps members could be certified in doing that type of thing as
14 well.

15 One of the things I'm very much supportive of is
16 that the state is making the investment, our sponsors are making
17 an investment, and our Corps members, we be able to place them
18 in entry-level positions. I figure that a young person going
19 through the Conservation Corps, being certified as someone with
20 good work ethics, who's gotten their GED, gotten their high
21 school diploma, they're basically qualified enough for an
22 entry-level position. And so, we're looking at someone working
23 with, particularly Resource Agency departments, to facilitate
24 their interest, and to public service, public sector jobs.

25 So, some of these things are what we're working
26 at, and what we're looking at, in an effort to inspire our Corps
27 members. We figure that if a Corps member knows, coming into
28 the program, what the opportunities that may exist for him or

1 her are, that they're going to be much more excited about
2 staying in the course, maybe, for that six months, to that year,
3 to the eighteen months to get that GED, to get that high school
4 diploma, develop those skills, and then move into jobs both in
5 the public sector and the private sector.

6 SENATOR HUGHES: The California Conservation
7 Corps has a long, wonderful history. And I'm sure that B.T.
8 Collins is up in Heaven, smiling at you, and saying, "Go, guy,
9 go."

10 And based on that, and seeing that the President
11 Pro Tem is engaged, I'd like to move your nomination.

12 MR. PRATT: Thank you very much.

13 SENATOR HUGHES: Oh, go right ahead. I guess I'm
14 presiding. You go right ahead.

15 [Laughter.]

16 SENATOR HUGHES: He wanted to ask a question.

17 SENATOR LEWIS: Thank you.

18 How much is the compensation for a Corps member
19 over the course of a year? If they stay in for the whole year,
20 what are they making?

21 MR. PRATT: We pay them minimum wage. There are
22 increases if they become crew leaders.

23 One of the things I'm particularly interested in
24 is to develop an opportunity to have merit increases and
25 incentive pay for their ability to do -- to gain or to
26 demonstrate that work ethic, the fact that they've gotten a GED,
27 the fact they've gotten a high school diploma. We need to build
28 in merit increases and incentive pay.

1 I think, basically, we're operating at a
2 disadvantage because we've got them at minimum wage.

3 SENATOR LEWIS: The reason I'm asking the
4 question is, unless I'm failing the new math, it appears from
5 all budget sources, we're spending about \$32,500 per Corps
6 member, which is just more than I would have imagined.

7 MR. PRATT: Well, you have to understand as well
8 that our program has 11 residential centers. Those Corps
9 members are in those centers 24/7. Which means that there's
10 supervision provided for them, and when they're in the
11 residential facilities, when they're on the grid or on the
12 grade.

13 And so, it's an investment of considerable
14 resources, but many of our Corps members are in the 24-hour
15 programs.

16 SENATOR HUGHES: We've had a motion, Mr. Chair.
17 I guess you want to ask some other things.

18 SENATOR KNIGHT: Keep this moving, will you,
19 Senator Hughes.

20 [Laughter.]

21 SENATOR HUGHES: Do you have any family here?

22 CHAIRMAN BURTON: I was talking to Senator
23 O'Connell about how much money there was in the budget for
24 school safety.

25 Now, if that's not an important issue to you,
26 Senator Hughes, I want to hear it right now.

27 SENATOR HUGHES: I never asked you what you were
28 talking about. If you want to expose your discussion go right

1 ahead.

2 SENATOR O'CONNELL: School safety for Los Angeles
3 and Orange Counties.

4 CHAIRMAN BURTON: She wants another county into
5 her program, how wonderful.

6 SENATOR KNIGHT: I object.

7 CHAIRMAN BURTON: Do you have any family here,
8 sir?

9 MR. PRATT: No, sir, I don't.

10 CHAIRMAN BURTON: Do you have any supporters
11 here, sir?

12 MR. PRATT: I believe there may be a couple
13 supporters.

14 CHAIRMAN BURTON: Come right up.

15 MR. WASHABAUGH: Good afternoon, Chairman Burton
16 and Members of the Rules Committee. I'm Dwight Washabaugh. I'm
17 President of the California Association of Local Community
18 Conservation Corps, representing the 11 nonprofit Corps in the
19 state, in addition to the CCC.

20 I'm here inform give our strong support for the
21 confirmation of Wes Pratt as Director of the CCC.

22 Thank you.

23 CHAIRMAN BURTON: Thank you.

24 Sir.

25 MR. RODRIGUEZ: My name is Richard Rodriguez.

26 That you for the opportunity to express our
27 opinion here.

28 I represent the Association of Conservation

1 Employees, about the 200 conservationists I and IIs who actually
2 direct the work crews. We're affiliated with the California
3 Association of Safety Employees, Unit 7.

4 And I also wanted to come out and give our
5 endorsement to Mr. Pratt as the Director of the CCC.

6 It's our collective opinion as an association,
7 and we do have opinions, that over the past few years, the CCC
8 has been slowly adrift. I think that Governor Davis' choice in
9 selecting Wes Pratt is a good one, and I look forward to him
10 being a good selection to get us back on course.

11 In the short time that we've had an opportunity
12 to speak with Mr. Pratt, he's been very open, willing to hear us
13 out, and has been very accessible, which is a marked contrast to
14 administrations of the past. And I look forward to continuing
15 the open communications.

16 Again, I think that he's the guy that we want at
17 the helm, and I have a lot of confidence in his abilities to do
18 so.

19 CHAIRMAN BURTON: Thank you.

20 And for the record, Senator Peace was to be here
21 to introduce you, but he's hung up in the Budget Committee,
22 talking about school safety, which will not be in the budget.

23 [Laughter.]

24 MR. FRIES: Tim Fries with the California Union
25 of Safety Employees, CAUSE.

26 We also support the appointment.

27 MR. CASTANARES: Hello. As Senator Burton just
28 mentioned, my name is Art Castanares. I'm Legislative Director

1 for Senator Steve Peace. He was going to be here to introduce
2 Mr. Pratt. Unfortunately, the Budget Committee started a little
3 late.

4 He just wanted to express, we have worked with
5 Mr. Pratt for the past 20 years in San Diego as an attorney, as
6 a city council member, as a member of the Coastal Commission,
7 and most recently, as a CEO of the San Diego Urban Corps.

8 We wanted to express our support for his
9 appointment.

10 CHAIRMAN BURTON: Thank you.

11 Any witnesses in opposition?

12 Hearing none, moved by Senator Hughes.

13 SECRETARY WEBB: Senator Hughes.

14 SENATOR HUGHES: Aye.

15 SECRETARY WEBB: Hughes Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator O'Connell.

18 SENATOR O'CONNELL: Aye.

19 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Burton.

22 CHAIRMAN BURTON: Aye.

23 SECRETARY WEBB: Burton Aye. Five to zero.

24 CHAIRMAN BURTON: Congratulations, sir.

25 MR. PRATT: Thank you very much.

26 CHAIRMAN BURTON: Darryl Young, Director of
27 Conservation.

28 MR. YOUNG: Good afternoon. My name is Darryl

1 Young.

2 It's a bit awkward being on this side of the
3 table. For many years, as you know, I worked for the Senate.
4 For six years I served as the Chief Consultant to the Senate
5 Natural Resources Committee under Senator Hayden. And prior to
6 that, I served for four years in the Assembly for Assemblyman
7 Farr.

8 In the intervening time, I worked for the Sierra
9 Club as their lobbyist, and then as the Communications Director
10 for Carl Pope.

11 What my career has shown over this time is that I
12 have an undying and unceasing commitment to environmental
13 protection. The reason I asked for this Department's
14 appointment is because it is involved in so many different
15 things. The breadth of the Department is truly amazing. It
16 goes from protecting open space and ag. land, to looking at the
17 way we mine to protect water quality and the land, to looking at
18 the way we protect Californians from seismic safety, to the
19 Bottle Bill itself. So, there was a wide diversity of challenge
20 involved in this.

21 In the six months in which I've been in this job,
22 I have to say that the job has been very, very challenging.
23 It's been a challenge because I've never managed 700 people
24 before. The good news is that the 700 people are excited about
25 the new possibilities that await us.

26 I am committed to ensuring that the law is
27 enforced as it relates to open space, as it relates to the
28 Bottle Bill, as it relates to the mining law.

1 Clearly, we can do more, and the men and women of
2 the Department of Conservation are committed to that, as am I.
3 So, that's my opening statement.

4 CHAIRMAN BURTON: You've got jurisdiction over
5 the Williamson Act and farm land preservation; right?

6 MR. YOUNG: Yes.

7 CHAIRMAN BURTON: What steps either have you
8 embarked upon to protect farm lands from urban encroachment?

9 MR. YOUNG: The good news is that for the first
10 time, we have more financial incentives available to us. The
11 most recent park bond provided \$25 million to purchase
12 agricultural easements.

13 One of problems we've had in the past is that
14 financial planners and farmers are simply not aware that these
15 monies are available, so that farmers can farm in perpetuity.

16 We have formed a new partnership with the Farm
17 Bureau to ensure that their newsletters get this information.
18 But not only that, we're working with bankers and lenders, as
19 well as financial planners to understand that this is an option
20 for them, so that farmers can continue to farm high quality land
21 close to the urban edge.

22 CHAIRMAN BURTON: Are you familiar with the \$30
23 million that is put in the budget in connection with UC Merced?

24 MR. YOUNG: I am familiar that there is money in
25 the Governor's budget to purchase a number of easements.

26 But it's my understanding at this time that that
27 money does not come under our purview.

28 CHAIRMAN BURTON: Whose purview does it come

1 under?

2 MR. YOUNG: It's something that I think the
3 Resources Agency is currently working on with outside interests.

4 As you know, our responsibility is two-fold.
5 One, we give Williamson Act subventions to counties who
6 voluntarily decide to participate.

7 The other thing we do is, when farmers want to
8 put their lands aside, we give them -- we buy an easement from
9 them to not develop that land.

10 CHAIRMAN BURTON: Well, whoever is working on
11 that issue better explain it to people on the Budget Conference
12 Committee, because there is a concern that they're buying land
13 that was supposed to be free as to something else.

14 MR. YOUNG: I'd be happy to help facilitate that
15 communication.

16 CHAIRMAN BURTON: You're the agency in charge of
17 the Surface Mining and Reclamation Act. There's a lot of
18 concern over the impact of abandoned mines on rivers and water
19 quality.

20 What actions have you taken or are you going to
21 take to address the environmental and public safety concerns?
22 Do you need new funding, new statutory authority or what?

23 MR. YOUNG: We believe that there is, indeed, a
24 need for additional enforcement. We're talking about a \$3
25 billion industry with roughly 1200 mines. Of that, the
26 Department currently has less than eight individuals to regulate
27 that industry. It's very difficult for us to say that we're
28 doing a good job right now with that limited amount of staff.

1 As part of that, the Governor has requested
2 additional funding. Our budget has additional funding for
3 additional staff to review the financial assurances by mine
4 operators. But clearly, we don't think that's enough.

5 There is a statutory limit that says that we can
6 charge no more than \$2,000 per mine. We'd like to look at that,
7 and look at other ways to fund additional enforcement.

8 One of the things that my staff identified is, we
9 simply don't have enough bodies to go out there and ensure that
10 everyone's doing the right job.

11 Let me also preface that by saying that the law
12 has -- as you know, the lead agency is local government. So,
13 there is an uneven approach to SMARA by different governments.
14 So, what we want to do is work with those lead agencies to see
15 that they enforce the law properly.

16 CHAIRMAN BURTON: All right.

17 What was your thinking when you reversed position
18 on the Bottle Bill and took items out of the bill that you
19 originally thought should be in the recycling area?

20 MR. YOUNG: One of the things we wanted to create
21 was a minimum of confusion in this program.

22 I was appointed at the end of November. And we
23 were faced with a decision very quickly as to what to include in
24 the system and out of the system.

25 The key definition you're referring to is the
26 definition of what is a noncarbonated soft drink.

27 CHAIRMAN BURTON: Yes.

28 MR. YOUNG: And the people that were reviewing

1 that, we came out with emergency regulations. And let me state,
2 these are only emergency regulations.

3 There was a great deal of confusion and concern
4 that, in the case of the vegetable juices, there was not a
5 specific mention of vegetable juices in the law. And therefore,
6 there was potential legal challenge that would have created
7 confusion among consumers and created a delay implementation of
8 the law.

9 So, our determination was to leave that out now.
10 We have fully committed to holding hearings. This is something
11 we have not done before.

12 CHAIRMAN BURTON: Why don't we talk about Kool
13 Aid?

14 MR. YOUNG: Okay, there is no legal definition
15 currently of a noncarbonated soft drink.

16 CHAIRMAN BURTON: Why don't you take a look at
17 what the people who make Kool Aid, and the founder of Kool Aid,
18 talk about? They talk about it a being a soft drink.

19 I mean, clearly, you know, I think that one could
20 make an argument either way about carrot juice, V-8 juice.

21 Kool Aid, what was the thinking about removing
22 Kool Aid.

23 I'm an idiot, and I found it on the web site.
24 And the people in your department are pretty smart, and they
25 could have figured it out.

26 Kool Aid, if nothing else, is a soft drink. In
27 fact, we had big discussions with the Governor and, I think, the
28 industry about things like Grape Aid that people could get in

1 the WIC program. So, we exempted some of the large containers
2 that poor families could buy. And I don't know if we were
3 protecting the poor families or the people that manufacture the
4 stuff and sell it, but we exempted that stuff.

5 I mean, you know, Grape Aid, Kool Aid, give me a
6 break. It's right here. "History of Kool Aid by Kool Aid," you
7 know. It's a soft drink.

8 One of the top selling products was soft drink
9 syrup named Fruit Smack before they called it Kool Aid. "Kool
10 Aid, a new soft drink mix introduced in 1927," frosty smiley
11 pitcher. "Kool Aid expands. Kool Aid is also ready to drink.
12 Kool Aid Bursts."

13 First of all, if you were on this side of the
14 table, we don't like bureaucrats rewriting the law because it's
15 going to make it convenient for somebody. And we really don't
16 like them undercutting the work product.

17 And it's not like the Bottle Bill was something
18 rushed through. There was a lot of talk, a lot of this, a lot
19 of discussions with people in the Governor's office, and a lot
20 of discussions with the Governor's office with us.

21 And now, you or the Department is being sued for
22 basically writing laws without a license, I guess.

23 I'm trying to figure out how that happened. I
24 mean, I think you could make an argument about vegetable juice,
25 but then maybe again, is that for you to decide or the court to
26 decide, because you certainly didn't talk to either the people
27 who wrote the bill, who spent a lot of time on it, and then Kool
28 Aid, not even close.

1 MR. YOUNG: Let me say that the regulations that
2 we adopted are emergency regulations. They're by no means
3 permanent. It was not our intention, nor is it my intention, to
4 subvert the intent of the Legislature, truly.

5 CHAIRMAN BURTON: For argument's sake, I'm going
6 to give you tomato juice and V-8.

7 I cannot conceive of something, short of I don't
8 know what, what Kool Aid was doing in there. What basis did
9 you pick Kool Aid?

10 MR. YOUNG: Kool Aid, at the time the definition,
11 the challenge was, what was the definition of noncarbonated soft
12 drink.

13 I admit that, in fact, Kool Aid is probably a
14 noncarbonated soft drink. It comes in pouch -- it comes in a
15 primarily powdered form, so it's not really a beverage
16 container. But if it was to come in a beverage container, it
17 would probably be considered a noncarbonated soft drink.

18 CHAIRMAN BURTON: If it doesn't come in a
19 beverage container, I don't think the recycling bill said you
20 had to recycle the Kool Aid packets that the little kids sell
21 for ten cents now.

22 MR. YOUNG: That's correct, but if it were in a
23 container, we would recommend that.

24 Our goal is that when the final regulations come
25 out, to include public comment and testimony of this nature to
26 ensure that as many beverages are recycled.

27 CHAIRMAN BURTON: But basically you did all this
28 stuff to avoid, quote, "confusion". Now you're going to, as I

1 understand it, at least as far as Kool Aid is concerned, change
2 the regulation to add to confusion?

3 MR. YOUNG: No.

4 CHAIRMAN BURTON: Well, I don't know. You took
5 it out so there wasn't confusion. I assume if you're putting it
6 in, there'll be confusion.

7 Everybody, and that's overstating it, but people
8 in the industry, and it was kind of understood that when this
9 law took effect, that something was going to be happening when
10 they went to a store. In fact, I think we even addressed some
11 of the concerns that the Governor expressed about how are they
12 going to know whether it's this or whether it's that.

13 And it just seemed to me the action you took,
14 that now subjects you to a lawsuit, which you kind of wanted to
15 avoid, is really going to confuse it more than if you would have
16 just straight away gone with what was thought, at least in my
17 opinion.

18 I'd like to go back to days of two cents and a
19 nickel deposit bottle and forget everything else but it's
20 beyond that.

21 Go ahead.

22 MR. YOUNG: The letter that we have from
23 Mr. Moose, representing CAW, is very positive. They want to see
24 if there's a way to work out the solution without having to go
25 to court. And that is our intention.

26 We are going to use the period of public comment
27 to ensure that their needs are addressed, and that the
28 Legislature's needs are addressed, and the public's needs are

1 addressed.

2 It's our intention to clarify the law in formal
3 regulation.

4 CHAIRMAN BURTON: I don't think it's your duty to
5 clarify the law; I don't think.

6 I think we pass laws. Court clarifies laws. I
7 think bureaucrats carry out laws.

8 I mean, you know, it's not your duty to clarify a
9 law. It's your duty to implement the law. It's the attorneys
10 for Kool Aid's duty, or V-8, to sue under the law. And it's the
11 duty of the court to rule on the law.

12 This letter, they believe you intentionally did
13 this. It's my understanding they're going to file a suit.

14 I'm personally, you know, because it wasn't
15 really my deal. If it was my deal, I would have filed a suit
16 the day that the reg. came out.

17 But so I can clearly understand, you made these
18 rulings based on your belief that there was some question? So,
19 it was your duty to sort of, these are my words, rewrite the law
20 so there wouldn't be any questions?

21 I don't even think that the V-8 makers could have
22 written a letter this long.

23 MR. YOUNG: It was not our intention to rewrite
24 the law.

25 CHAIRMAN BURTON: I'm still getting this stuff
26 from Jim Moose, which is 10-1/2 pages.

27 It's not your job to clarify our laws. It's your
28 job to carry them out, and then a court's job, if somebody sues

1 you, the court says yeah, they did it right, or the court says
2 you did it wrong.

3 I'm not crazy about that kind of stuff.

4 Senator Lewis.

5 SENATOR LEWIS: No questions.

6 CHAIRMAN BURTON: Senator Hughes?

7 SENATOR HUGHES: No questions.

8 CHAIRMAN BURTON: Senator Knight.

9 SENATOR KNIGHT: Thank you, Mr. Chairman.

10 Sometime ago, there was a question about
11 recycling or doing away with aerosol cans. There was a
12 mechanism by which you can puncture and collapse the aerosol
13 cans.

14 Has that all been cleared up and we're squared
15 away on that now as to what the mechanism is by which you can do
16 that?

17 MR. YOUNG: My understanding is that aerosol
18 cans, which come under the Integrated Waste Management Board,
19 not in our Department, but the process has been established.

20 SENATOR KNIGHT: Thank you.

21 CHAIRMAN BURTON: Let's get back to mining for a
22 minute.

23 You got the appointment when?

24 MR. YOUNG: On November 23rd.

25 CHAIRMAN BURTON: Are you familiar with the
26 letter Senator Sher sent about possible list of statutory
27 changes to the Surface Mining Act?

28 MR. YOUNG: I remember seeing the letter, yes.

1 CHAIRMAN BURTON: Are you familiar with it?

2 MR. YOUNG: I understand that there was a variety
3 of questions about what changes would be necessary or helpful.

4 CHAIRMAN BURTON: Do you have anybody looking at
5 that? Obviously, you aren't into it. Is there somebody in the
6 Surface Mining Operations who's reviewing that? I think we're
7 waiting for an answer.

8 MR. YOUNG: Well, we have communicated with
9 Senator Sher's office about the variety of changes that would be
10 necessary.

11 CHAIRMAN BURTON: What have you done about the
12 Webber Creek quarry in El Dorado?

13 MR. YOUNG: The Webber Creek quarry is a quarry
14 that contains asbestos, which is naturally occurring.

15 We have been ensuring that SMARA's being properly
16 enforced. We're continuing on El Dorado County to ensure that
17 the Webber quarry is properly reclaimed.

18 CHAIRMAN BURTON: What is it that the Department
19 can do about some of these, you know, mines that, I guess,
20 aren't making any -- you know, there's some mines that are
21 operating without any valid financial assurances or without
22 reclamation plans.

23 What can you do? Can you shut them down or what?

24 MR. YOUNG: In fact, one of the things that we
25 just tested is the authority for the Department to challenge a
26 county, which is the lead agency, to properly enforce SMARA.

27 CHAIRMAN BURTON: I'm sorry?

28 MR. YOUNG: One of the things we've just done is

1 establish our legal authority to challenge counties, which are
2 the lead agencies, or local governments, to enforce SMARA, to
3 shut down someone who does not have a proper financial
4 assurance.

5 CHAIRMAN BURTON: So, you've got to sue the
6 county to sue the mine owner?

7 MR. YOUNG: Under the law, yes. We have to sue
8 them to compel them to close down.

9 The other thing we've also done is, we have added
10 staff in our new budget to review financial assurances, to
11 ensure that financial assurances are proper.

12 CHAIRMAN BURTON: Where is the Webber Creek
13 quarry deal?

14 MR. YOUNG: Webber Creek is in El Dorado County.

15 CHAIRMAN BURTON: I know that.

16 Where it in the process?

17 MR. YOUNG: Two things have happened. First of
18 all, the State Mining and Geology Board has moved to take over
19 inspection authority from El Dorado County to inspect the
20 mine, to ensure that they're properly reclaiming the site.

21 We also are reviewing the actions that are being
22 taken by the county to ensure that if they do not properly
23 operate, that they report that to the Board, and that the Board
24 takes appropriate action.

25 CHAIRMAN BURTON: They could conceivably be fined
26 up to 27,500 a day?

27 MR. YOUNG: That's correct.

28 CHAIRMAN BURTON: They have gold down there? What

1 is it that they're doing?

2 MR. YOUNG: It's rough aggregate, is my
3 understanding.

4 CHAIRMAN BURTON: They're bringing enough of that
5 out to be able to pay that kind of fine?

6 MR. YOUNG: No, not necessarily.

7 CHAIRMAN BURTON: So, they're just going to go
8 hucklety-buck until they get shut down and then declare
9 bankruptcy?

10 MR. YOUNG: It's two things. First of all, we
11 are watching that they reclaim the site properly. We are
12 regularly monitoring that site and investigating it.

13 Second of all, should they not properly close the
14 site, we will move for penalties.

15 CHAIRMAN BURTON: But they have been operating
16 for over a year without financial valid assurance.

17 MR. YOUNG: Right, and that's why the Board has
18 moved against Webber.

19 CHAIRMAN BURTON: Do you have family here?

20 MR. YOUNG: Yes, my wife is here, but I have
21 witnesses as well.

22 CHAIRMAN BURTON: Family first, witnesses second.

23 MR. YOUNG: This is my wife, and next to her is
24 whom I consider my older sister.

25 CHAIRMAN BURTON: Now your witnesses in support.

26 MS. EDDY: Mr. Chairman, Members of the
27 committee, I'm Shannon Eddy. I'm representing the Sierra Club
28 today, and we do support Darryl's confirmation.

1 We've known Darryl for close to ten years as he's
2 worked with the State Legislature and with the Sierra Club, and
3 we know him to be creative, and fair, and hard working,
4 diligent. And we're confident that given his breadth of
5 knowledge of the issues, that he can handle the issues that are
6 going to be coming up before the Department.

7 It's also our hope that as challenges arise
8 between the administration and the Legislature, that Darryl will
9 do his utmost to support the environmental health of the state.

10 CHAIRMAN BURTON: What do you think of the Kool
11 Aid deal?

12 MS. EDDY: We were surprised.

13 CHAIRMAN BURTON: Pleasantly so?

14 [Laughter.]

15 MS. EDDY: No, I wouldn't say we were pleasantly
16 surprised. And this is also one of those conflicts that I was
17 referring to, that our hope is that Darryl's able to manage some
18 of those conflicts between the Legislature and the
19 administration.

20 CHAIRMAN BURTON: No. He is the administration.

21 MS. EDDY: Uh-huh.

22 CHAIRMAN BURTON: He's not an ombudsman. He is
23 the administration.

24 So the conflict, unfortunately, is between the
25 Legislature and the person who made the ruling.

26 Okay. We'll leave it at that.

27 MR. YARYAN: Tim Yaryan, representing the
28 California Association of Resource Conservation Districts today,

1 and our board unanimously endorsed Mr. Young's confirmation
2 based on the fact that he's been able to come in and grasp the
3 issues involving these districts, and has manifested great
4 understanding and commitment to conservation principles.

5 And I can't answer any questions on the Kool Aid,
6 because I don't know anything about it.

7 We urge your aye vote for his confirmation.

8 CHAIRMAN BURTON: Thank you.

9 Next, please.

10 MR. HOUSTON: Mr. Chairman and Members, Bob
11 Houston, representing the Construction Materials Association.
12 We're the aggregate people in Northern California, from the
13 Tehachapis to the --

14 CHAIRMAN BURTON: You're the what?

15 MR. HOUSTON: Aggregate extraction people.

16 The people that we represent are all good,
17 responsible operators, sir.

18 CHAIRMAN BURTON: Got their financial assurances?

19 MR. HOUSTON: They have no problem meeting
20 whatever the Department wants.

21 CHAIRMAN BURTON: You're the white hats.

22 MR. HOUSTON: We have on several occasions had
23 the opportunity to meet with the Director on issues, and really
24 appreciate the open discussion we've had and his ability to put
25 the appropriate parties together to try and resolve issues.

26 We urge his support.

27 CHAIRMAN BURTON: You're not involved with
28 Webber Creek?

1 MR. HOUSTON: Me personally, not at all.

2 CHAIRMAN BURTON: Nobody in your association?

3 MR. HOUSTON: I'm not sure that they're a member.
4 I'm really not.

5 MR. BROWN: Mr. Chairman, Members of the
6 Committee, Corey Brown, Trust for Public Land, also in support
7 of the confirmation Darryl Young.

8 I've known Darryl for over 18 years. I believe
9 he's a very committed professional, very strong in background on
10 conservation issues. I think he'll make a very good Director.

11 I don't know where Webber Creek is, and we urge
12 your support.

13 CHAIRMAN BURTON: You don't know where Webber
14 Creek.

15 Were you pleasantly or unpleasantly surprised by
16 the Kool Aid deal? I'm talking about the Kool Aid issue.

17 I mean, it's funny, but it's very serious
18 business for me when a bureaucrat ends up re-writing a bill that
19 I spent an awful lot of time with a lot of people I'd just as
20 soon not see again in life, in a small room, figuring we had it
21 all worked out. And now see it come back at this stage of the
22 game.

23 MR. BROWN: Yes, sir. That issue, I apologize,
24 I'm not as familiar with.

25 CHAIRMAN BURTON: You're not familiar with all
26 the recycling issues? You're only into land?

27 MR. BROWN: That's area I work in now. The
28 Department has jurisdiction over some of the land stuff.

1 Thank you.

2 CHAIRMAN BURTON: Witnesses in opposition.

3 MR. MURRAY: Mr. Chairman and Members, Mark
4 Murray, Executive Director of the environmental group,
5 Californians Against Waste.

6 And regrettably from my perspective, because I've
7 known Darryl for about 13 years now, worked with him for many
8 years, I need to be here asking you not to confirm him at this
9 time.

10 The Bottle Bill program is the largest program
11 administered by the State Department of Conservation. For about
12 two years, we worked on legislation to expand and reform that
13 program. Senator O'Connell was very involved in that effort.
14 You were involved in that effort, as was Senator Sher.

15 And as I think you've noted today, that was a
16 very complex, detailed negotiation.

17 It was then very frustrating that, starting in
18 December and then through February, the Department of
19 Conservation took a series of actions which we believe, and we
20 believe that the statute will indicate, undermines recycling,
21 undermines legislative intent, and frankly, was specifically --
22 the Department took actions that they had no authority to take
23 under the legislation.

24 Specifically, and I'll just note two of those.
25 On December 16th, the Department of Conservation announced
26 processing fees on the manufacturers of glass and plastic
27 beverage containers that was substantially lower than the level
28 that was agreed to in SB 332, and specifically that was

1 specified by the statute.

2 And I know, Senator O'Connell, you remember how
3 we would discuss and negotiate the details, down to literally
4 the thousands of dollars in terms of what manufacturer was going
5 to pay what, and what recycler was going to receive what
6 amount.

7 And the Department of Conservation's actions
8 actually lowered the amount of processing fee that glass --
9 manufacturers of beverages sold and glass and plastic would pay
10 by \$12 million.

11 The impact of that was that, number one, it
12 obviously impacted the amount that they were paying, and the
13 signal that they were being sent in terms of the recyclibility
14 of their container, but it also puts in jeopardy funding for
15 other recycling programs.

16 Secondly, on February 29th, two months after the
17 effective date of the statute, the Department narrowed the scope
18 of containers covered by the program, and therefore, the scope
19 of containers that are likely to be recycled, by ignoring the
20 term, "nonrecycled soft drink containers."

21 The Department, prior to February 29th, we think
22 appropriately had been viewing the term "nonrecycled soft drink"
23 as a catch-all phrase to cover the hundreds of containers that
24 we weren't able to specify in the legislation.

25 Now, we did specifically note several different
26 kinds of beverage containers, but in this world of New Age
27 beverages, it was just not possible for us to note every single
28 possible kind of beverage.

1 Senator Burton, you've noted specifically the
2 Kool Aid Burst, which on the package note that they are a soft
3 drink. They're labeled as a soft drink on the package. Maybe
4 that's one of the most egregious examples, but in general, we
5 feel that the Department's original interpretation, the
6 interpretation that took effect on January 1 of this year, was
7 correct, that noncarbonated soft drinks was a catch-all phrase
8 referring to noncarbonated, nonalcoholic beverages.

9 I guess what's disturbing about both of these
10 actions is, prior to the action on December 16th, regarding
11 processing fees, the Department of Conservation and the
12 Governor's Office was lobbied by the Glass Packaging Institute,
13 and lo and behold, on the 16th, the Department of Conservation
14 implemented exactly the same proposal that was developed by
15 attorneys for the Glass Packaging Institute.

16 Prior to the February 29th decision reversing the
17 containers that were added to the program, the Department of
18 Conservation was lobbied by -- and the Governor's Office -- was
19 lobbied by the League of California Food Processors on behalf of
20 the Campbell Soup Company, which makes V-8 Juice and tomato
21 juice, by Kraft Foods, which makes the Kool Aid Bursts. And
22 whether they actually lobbied the Department of Conservation,
23 I'm not sure.

24 I know they've been lobbying folks, Abbott
25 Laboratories on behalf of Ensure, all products that were exempt
26 under the Department's February 29th announcement.

27 CHAIRMAN BURTON: How do you know that?

28 MR. MURRAY: Because I've talked to all of them.

1 So, all of those entities had -- actually, prior
2 to January 1st, were lobbying the Legislature. There was a
3 meeting actually at the Governor's Office, where several of
4 these interests, from the one representing Abbott Laboratories
5 and another representing the California League of Food
6 Processors, actually were at a meeting at the Governor's Office
7 a week before implementation. They wanted to talk about this
8 issue. And there was some discussion of actually postponing the
9 implementation at that time.

10 To the credit of the administration and to
11 Darryl, at that time efforts to postpone implementation were
12 repelled at that time.

13 CHAIRMAN BURTON: They would have had to get a
14 bill through the Legislature; correct?

15 MR. MURRAY: Correct. I'm not exactly sure what
16 their strategy was, what their scheme was in terms of how to not
17 have a statute that was to take effect January 1, not take
18 effect. But there was a letter from the California Grocers
19 Association actually asking for some kind of delay. I think
20 that Darryl, again to his credit, helped to assure the retailers
21 in particular that there would be a smooth transition in terms
22 of implementation. Frankly, that makes --

23 CHAIRMAN BURTON: The retailers did not want -- I
24 think the retailers wanted another bill.

25 MR. MURRAY: There was a split between the
26 California Retailers Association and the California Grocers
27 Association. I think the retailers were on board with their
28 implementation. The Grocers Association had a slightly

1 different perspective and had actually written a letter to the
2 Governor or the Department asking for a delay.

3 I think that that frankly adds to the
4 logicalness and the confusion that we experienced on February
5 29th, when, after these scope of containers were added to the
6 program, the Department announced -- on February 29th, they
7 announced that effective April 15th, the manufacturers of these
8 select containers would no longer have to pay in. And sometime,
9 July 15th, consumers would no longer be able to get their money
10 back for these containers, providing some kind of transition.

11 Retailers were, I think, immediately directed, or
12 maybe they had a two-week period, to stop showing the redemption
13 value on the containers.

14 Frankly, I can't imagine a scenario that was more
15 confusing to retailers, recyclers, consumers, than the kind of
16 mid-course correction that was implemented by the Department of
17 Conservation on February 29th.

18 My concern has to do with recycling and getting
19 containers recycled, and making sure that we have funding for
20 the Conservation Corps, and Curbside Recycling, and other
21 recycling programs.

22 I think that, frankly, for this Committee there's
23 other things to look at. One is the role and the responsibility
24 of a state agency in terms of interpreting legislative intent,
25 and frankly, in terms of rewriting legislation.

26 A question that I have is, who is actually
27 responsible within the administration for making this decision?
28 I think that I've worked with Darryl for a long time, and I know

1 he's a good guy, and I also know that he's a very loyal soldier.
2 But I still find it very difficult to believe that Darryl was
3 responsible for these decisions.

4 I respect him taking responsibility for it, but
5 frankly, this doesn't seem like the Darryl Young that I've
6 worked with for the last decade.

7 Frankly, in terms of the third issue is the
8 process. You know, Senator O'Connell, you had dozens of
9 meetings with the various stakeholders on this issue. When SB
10 332 was moving through a process, we had public hearings. We
11 had opportunities for folks to comment. And we negotiated the
12 details of this legislation down to the dollar.

13 Yet somehow, from December 10th, when the
14 Department of Conservation staff had produced a recommended
15 processing fee, and December 16th, when the actual processing
16 fee was announced, the staff recommendation was changed. There
17 was no opportunity for comment. There was no opportunity for
18 public hearing. There was no opportunity for discussion. And
19 that's frustrating in terms of how is this process working.

20 There doesn't seem -- when the administration
21 starts taking responsibility for drafting legislation, there
22 really doesn't seem to be the same kind of thoughtful process
23 that exists in the Legislature.

24 Now, if somehow the rules have changed, and that
25 that's where policy is going to be developed, I guess we'd like
26 to have a heads up and understand how can we participate in that
27 process, because there was no opportunity to participate in that
28 process.

1 So again, I've known Darryl for a long time. I
2 know he's a good guy. I supported Darryl's appointment to the
3 Department of Conservation when he got the appointment six
4 months ago because I knew that it was a Department was in
5 desperate need of leadership.

6 It's very frustrating to us to now have this
7 situation occur over the last several months. In the next week,
8 and we feel we have no other choice but to pursue this, in the
9 next week, CAW will be filing suit in Sacramento Superior Court,
10 challenging the Department's actions, and seeking an injunction
11 on these actually two issues, the processing fee issue and the
12 containers, what's in and out.

13 So, thanks for your time. If you have any
14 questions?

15 CHAIRMAN BURTON: Why did you wait so long to
16 file suit?

17 MR. MURRAY: Well, frankly, because he's a good
18 guy. And, you know, we're all experiencing a bit of confusion
19 as to how to deal with this administration in terms of, this is
20 an administration that we have a lot of allies in, and many of
21 us helped to put this administration into office.

22 And it's very frustrating when, in 13 years of
23 working on recycling policy with the Department of Conservation
24 and the Integrated Waste Management Board, we never had the need
25 to sue, whether Governor Deukmejian or Governor Wilson's
26 administration. It was very awkward and frustrating for us to
27 be left with this as the only avenue. And I think that we've
28 determined that this is, in fact, the only avenue.

1 CHAIRMAN BURTON: You're saying that they went
2 below the level of processing fees set in the bill?

3 MR. MURRAY: We set a formula in the statute
4 regarding the calculation of an average scrap value. The
5 Department of Conservation has always determined the
6 determination of scrap value as being the average amount per
7 container.

8 The Department of Conservation had to, in order
9 to make this decision on December 16th, had to interpret the
10 cost of recycling as something other than the average cost of
11 recycling, which they had been using for the last decade.

12 Secondly, they had to use an authority to project
13 the total amount of containers that would be recycled that the
14 Legislature had specifically taken a way from them.

15 Thirdly, they had -- the decision undermined
16 clear legislative intent. As you may recall, in those --
17 Senator Sher, in his testimony on the Floor of the Senate, and
18 in committee, talked about reforming the processing fee to
19 eliminate the disincentive for containers with high recycling
20 rates.

21 The way the old processing fee worked, as
22 containers recycling rate increased, they had to pay a higher
23 processing fee. We specifically eliminated it from the
24 statute.

25 The Department's December 16th interpretation put
26 that back in, and they had no authority. They had no -- there
27 was no provisions to allow them to make the calculations that
28 they used to get to that number.

1 Confusing, I know.

2 MR. YOUNG: We believe that we did have the
3 authority in terms of legislative intent.

4 We believe that there are countervailing
5 legislative intents.

6 One of the things we don't want to create is a
7 surplus. If we calculated the monies --

8 CHAIRMAN BURTON: Well, you had a bill that Sher
9 and O'Connell spent an inordinate amount of real time on, and
10 then I spent some time on it, but they were the ones doing the
11 stuff.

12 Now, what was the countervailing legislative
13 intent?

14 MR. YOUNG: Not to create a surplus. Originally,
15 the idea was to eliminate surpluses in the fund.

16 CHAIRMAN BURTON: I don't remember that ever
17 popping into my mind.

18 SENATOR O'CONNELL: As I recall, we did have a
19 surplus.

20 I think my concern is -- and you folks are the
21 experts on it, and I'm trying to forget this -- the projections
22 are, and the accusations are, I guess, Mr. Young, and my concern
23 would be, what happens with this recalculation on the processing
24 fee when that fund were in the red? And the projections, as
25 I've been led to believe -- I don't know at how many years,
26 Mark, you might have to help me -- that fund is going to run
27 dry, and then what happens?

28 MR. YOUNG: Then we would have to recalculate the

1 amount of processing payments that we'll have.

2 SENATOR O'CONNELL: The processing fee.

3 MR. YOUNG: That's correct.

4 SENATOR O'CONNELL: Do you have a projection in
5 terms of the time, because there has been --

6 MR. MURRAY: You may recall, there was a
7 discussion or desire on the part of the stakeholders was to not
8 to have to deal with this thing, as I think that you probably
9 both share, to not have to deal with this thing for seven years.
10 And we talked about being able to project it out so that we
11 would have enough funding for seven years.

12 Based on the return rates, and the Department
13 just put out new return rates for the last half of the year, but
14 prior -- haven't had a chance to calculate those -- but based on
15 where return rates when we were negotiating this legislation,
16 and as of the first of the year, this would only last us -- this
17 -- if we took this \$12 million a year and diverted it from the
18 fund to offset processing fees, then that would reduce the
19 period of time to as short as three years before we'd have to
20 deal with this again legislatively.

21 That's \$12 million a year. You know, that's \$36
22 million in three years.

23 SENATOR O'CONNELL: One other question,
24 Mr. Chairman, if I may.

25 Mr. Young, we're into billions of pounds of
26 recycling of the different material.

27 Your decision to exclude the Kool Aid-like
28 products is about how much of the total?

1 MR. YOUNG: Less than six percent of the entire
2 market.

3 CHAIRMAN BURTON: So it's like saying it's
4 probably five percent of the entire market.

5 MR. YOUNG: I don't want to be irresponsible.
6 It's less than six percent.

7 CHAIRMAN BURTON: Less than six, I've got to
8 believe it's more than five.

9 MR. YOUNG: More than five, that's correct.

10 CHAIRMAN BURTON: Five percent, that's not a bad
11 chunk.

12 MR. YOUNG: It's a large chunk.

13 SENATOR O'CONNELL: Thank you.

14 CHAIRMAN BURTON: So, what was the process? You
15 assumed that there was conflicting legislative intent, so
16 instead of maybe calling the people involved in the bill, you
17 just figured to take the legislative intent favored by the
18 industry?

19 MR. YOUNG: No. In fact, we had conversations
20 with Mr. Murray on a regular basis during this process, along
21 with other people from industry.

22 CHAIRMAN BURTON: Other people from the industry?

23 MR. YOUNG: And the Legislature.

24 CHAIRMAN BURTON: Who did you talk to in the
25 Legislature that thought you were doing the right legislative
26 intent?

27 MR. YOUNG: We advised them that this was an
28 issue.

1 CHAIRMAN BURTON: Wait, wait.

2 Talking to me and saying, I'm going to do this,
3 what do you think? Or calling me and saying, I'm doing this,
4 that's not a conversation. That's an e-mail.

5 MR. YOUNG: I had a conversation with Kip Lipper
6 from Senator Sher's office saying --

7 CHAIRMAN BURTON: And you said, "We're doing
8 this."

9 MR. YOUNG: We're thinking of doing this.

10 CHAIRMAN BURTON: And he said, that's just what
11 we thought.

12 MR. YOUNG: No, they were not happy with that.

13 CHAIRMAN BURTON: I mean, I would have to say,
14 with respect to Senator O'Connell and Sher and myself, that the
15 guy who knew more about the bill was Kip Lipper. And if he said
16 that isn't what we intended, where did you get the conflicting
17 intent?

18 I happen to believe that this whole thing -- and
19 like he said, we're soldiers, and we march.

20 But I remember reading in the newspaper when this
21 stuff was going through about who the Grocery, Manufacturers
22 Association, they made a mistake of leaking a memo that they
23 were going to hire a former colleague. Vic Fazio was going to
24 go and deal with the Governor. And that kind of blew the whole
25 thing up at that end.

26 So, after we go through all of the trouble to
27 draft the bill, and go through all of this stuff, where I think
28 at one time we sent a bill down to Governor Davis, then he

1 vetoed it. Then we had to do a rush bill then immediately, I
2 think, when Governor Davis was elected, urgency bill just to
3 extend it so there wasn't total chaos.

4 So, we go through all of this stuff, and then
5 basically, the things that the industry could not get us to do,
6 get done, and not done with public hearings. Get done against
7 what we wanted to do.

8 And you say, one, we want to avoid confusion. I
9 think there's going to be confusion.

10 That there was conflicting legislative intent, so
11 you talked to a staff person, but the person who really drafted
12 the bill and said that's not what we intended, so you went with
13 whatever the other intent was somewhere, that nobody knew,
14 without coming back to Senator O'Connell, without coming back to
15 Sher.

16 I'm not sure who worked on it in the Assembly. I
17 think at the very end, the Speaker got involved in it through
18 Patty Shifferly.

19 But everybody likes you. You've got a good
20 record, had a good record. Maybe got a good record.

21 I'm at a loss at this point as to what to do. I
22 talked to Nettie Sabelhaus, who said we do have more time and
23 meetings to consider this.

24 I want to know what's happening. I mean, if you
25 weren't a good guy, you'd be toast. I mean, we don't pass laws
26 to have the administration bureaucrats, whoever you are from
27 whatever administration, to just second-guess us and go with
28 what was basically an industry way.

1 I mean, Kool Aid, by their own admission, is a
2 soft drink. And then to talk about, well, it's in a packet. So
3 I guess if it's in a packet, and you mix it with club soda, then
4 it's carbonated, but we aren't recycling the packets.

5 And the difference between that bottle and that
6 bottle, I'm not sure.

7 My inclination is to put the matter over for a
8 further hearing while we figure out what to do.

9 To me, it's a very egregious thing to have
10 somebody just re-write legislation. It wasn't my bill, but
11 nobody talked to me, and everybody knew I was somewhat involved.
12 I don't think anybody talked to Senator O'Connell. I don't know
13 who talked to Senator Sher. You did talk to Kip Lipper, who
14 told you no.

15 I would think the intelligent thing to do would
16 have been -- except you knew what that answer would have been,
17 is to talk to Senator Sher and Senator O'Connell and say, "Look,
18 I'm really confused. There's a conflicting legislative intent
19 in our mind. And I'm thinking of going this way so there isn't
20 a surplus. Although, clearly, the formula and prior practice
21 says to go this way. Now, what are your feelings on it?"

22 I think they would have told you. And I think
23 it's like, I never used to ask my first sergeant in the Army if
24 I could go AWOL. I just went, and said, "Nobody told me I
25 couldn't."

26 So, unless there's objection by the Committee,
27 I'd like to put the matter over for another hearing.

28 Are you guys filing suit or what?

1 MR. MURRAY: Yes.

2 CHAIRMAN BURTON: It's an injunction, so it's a
3 quick suit.

4 MR. MURRAY: Yes, we hope. Depends on how much
5 the Department of Conservation fights us.

6 CHAIRMAN BURTON: I imagine, if they think they
7 were right, I would imagine they'll fight you.

8 It looked to me, on issue one, V-8, they'll
9 probably fight. On Kool Aid, they probably wouldn't. On the
10 processing fees, which is a big deal.

11 You know, one way to deal with the surplus in
12 that fund is to give more money to the CCC, because they get
13 money out of that.

14 MR. YOUNG: We'd like to do that, but the problem
15 is, statutorily we can't transfer the money from --

16 CHAIRMAN BURTON: Statutorily we can authorize it
17 if that was a problem with the surplus.

18 Do you see what I'm saying?

19 MR. YOUNG: I do.

20 CHAIRMAN BURTON: And, I mean, that's the whole
21 genesis of the phone calls from Tony Kline, "We have this
22 organization." What do you want, Tony?" And he goes all
23 through, what they want is two cents more on the Bottle Bill.

24 So, I mean, if there was a surplus, instead of
25 turning it back to the industry that's doing pretty well, last I
26 looked, we could always pass a bill and take care of the problem
27 by helping the CCC. Would have been a win-win situation, as
28 they say.

1 So, unless there is objection, we will continue
2 this hearing until the call of Chair. You've got a lot of time.
3 You've got until November.

4 MR. YOUNG: Thank you very much.

5 [Thereupon this portion of the
6 Senate Rules Committee hearing was
7 terminated at approximately 4:05 P.M.]

8 --ooOoo--

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2
3 CHAIRMAN BURTON: Governor's appointees required
4 to appear, Richard Bayquen, Chief Deputy Director, Department of
5 Health Services.

6
7 MR. BAYQUEN: Good afternoon, Mr. Chairman and
8 Members of Senate Rules Committee.

9 I have the honor and pleasure of being before you
10 today for your consideration as Chief Deputy Director of the
11 Department of Health Services.

12 The Department of Health Services is a very large
13 and complex organization, with approximately 6,000 positions,
14 and a budget of approximately \$27 billion in the coming fiscal
15 year.

16
17 Its programs and services, which are among the
18 most important and sensitive in state government, include:
19 public health, environmental health, licensing and
20 certification, and Medi-Cal.

21
22 I sought this appointment because I want to help
23 the Department fulfill its mission, which is to protect and
24 improve the health of all Californians. I consider this to be
25 the most challenging assignment of my 27-year career in public
26 service.

27 My career in state government started in 1972,
28 with the Department of Finance. As a budget analyst, I learned

1 the budget processes of the executive and legislative branches
2 of California government.

3 This experience has been invaluable in my
4 subsequent assignments, because an important and significant
5 aspect of these assignments has been developing budget proposals
6 and advocating and lobbying for resources to meet expanding
7 workload and caseloads, and to improve the services and systems
8 for which I have responsibility.

9
10 In the course of my career, I have also had the
11 opportunity to serve as Chief Deputy Director of three other
12 health and human services departments. These departments are:
13 Alcohol and Drug Programs, Developmental Services, and
14 Rehabilitation. As Chief Deputy Director of those departments,
15 I had numerous dealings with the Department of Health Services.
16 Quite frankly, at times I was frustrated by some of those
17 dealings when I felt the Department was being less than helpful
18 and responsive. These diverse experiences have given me a
19 unique perspective on the Department of Health Services.
20

21 As the Chief Deputy Director of the Department, my
22 primary goal is to improve the management, coordination, and
23 responsiveness of the Department. Additionally, it is my goal
24 for the Department to attain a high standard for the quality of
25 its work.
26

27 A key objective in attaining these goals is
28 eliminating the silo mentality that I believe exists in the

1 Department of Health Services and severely limits our
 2 effectiveness as an organization. Too often, I have seen staff
 3 from the Department respond to issues or problems from a very
 4 limited or myopic perspective, not a singular and coordinated
 5 response as a Department.

6 Although there is a diversity of responsibilities
 7 within the Department, it is all under the rubric of health, and
 8 our mission to protect and improve the health of all
 9 Californians. It is necessary to cultivate and build close and
 10 strong working relationships among staff who work in various
 11 branches and divisions of the Department. I see improving
 12 communication and coordination as the key role of the Chief
 13 Deputy Director.

14 In the short time that I've been with the
 15 Department, it became clear to me that the Department management
 16 did not have a good working relationship with CSEA. I have
 17 worked hard to improve our relationship with CSEA. Developing
 18 and maintaining a good working relationship with our employees
 19 and their representatives has been and will continue to be a
 20 high priority.

21 Last year, I served as Chief Consultant to the
 22 Assembly Budget Committee. In this capacity, I became aware of
 23 an excessive number of vacancies in the Department of Health
 24 Services. In January of this year, the Department was reporting
 25 in excess of 1,000 vacant positions, which was more than double
 26
 27
 28

1 our requirements in terms of salary savings. This was
2 unacceptable.

3 My first assignment from the Director was to
4 address and fix this serious problem. As a result of a very
5 focused and intense team effort, I am pleased to be able to
6 report that approximately 500 more positions are filled at this
7 time. This brings our vacancies in line with our salary savings
8 requirement.

9 It is my job to not only secure resources to
10 accomplish our mission and goals, but just as importantly, to
11 ensure the prompt and proper utilization of those resources.

12 California prides itself for the ethnic, cultural,
13 and geographical diversity it enjoys. With that diversity comes
14 responsibility to ensure that our programs and services are
15 equally accessible, understandable, and appropriate for all
16 Californians.

17 Beyond the ethnic, cultural, and geographical
18 diversity, there are those Californians with disabilities that
19 the Department has a responsibility to serve. Given my past
20 work in the field of disability programs and services, I bring a
21 keen awareness and commitment to ensuring that the programs and
22 services of the Department of Health Services are accessible and
23 appropriate to meet the needs of persons with disabilities.

24 The Department has made improvements to see that
25 our services are equally available, accessible, and appropriate
26
27
28

1 to California's diverse population. However, I believe there is
2 still much work to do in this regard, and I am committed to this
3 task.

4 As a long-time top level administrator in
5 California public service, I recognize and appreciate the role
6 and responsibility of the Legislature. As a former legislative
7 staff member, I have the utmost respect for the institution.

8 You have my commitment to work with the
9 Legislature and its staff on both sides of the aisle in an open,
10 forthright manner to bring solutions to the problems and issues
11 confronting the Department and the people we serve.

12 Although the Department faces many significant
13 challenges, these challenges also represent significant
14 opportunities for change and improvement. I believe that no
15 other department touches the lives of so many Californians in
16 quite the same way.

17 I am honored to have this opportunity to serve as
18 Chief Deputy Director of the Department of Health Services.

19 If the Committee has any questions, I'll be happy
20 to respond.

21 CHAIRMAN BURTON: Thank you.

22 What's the status of the Department's effort to
23 monitor compliance with the 5 percent nursing home wage pass-
24 through, enacted in last year's budget?

25 MR. BAYQUEN: Senator, we have done some very,

1 very preliminary audits in that regard.

2 As you may know, the Governor's budget did
3 propose, I believe, it was about nine additional staff, which
4 would give us the capacity to do about a 25 percent audit. The
5 Senate, in fact, has augmented that -- that proposal by about 24
6 additional staff.

7
8 But that is a very high priority, to make sure
9 that the requirements of that pass-through are met by those
10 facilities. And if, in fact, those facilities are not meeting
11 that requirement, then in fact those dollars need to be returned
12 with penalties.

13 CHAIRMAN BURTON: Has the Department reviewed
14 facilities that were identified by SEIU as not providing the
15 pass-through? I think they gave you a list of 52?

16
17 MR. BAYQUEN: I don't know if those were
18 specifically identified by SEIU. I do know that we have
19 reviewed some, but I can't say to you absolutely, sir, that they
20 were the ones that were on the list from SEIU.

21 CHAIRMAN BURTON: Wouldn't it make sense if
22 somebody involved, that understands whether or not there were
23 pass-throughs or not, gave you a list of them, that those would
24 probably be the likely subject?

25
26 MR. BAYQUEN: Yes, sir; you're correct. And I
27 will look at that, and make sure, if we haven't. I just can't
28 say to you that that's absolutely the case.

1 CHAIRMAN BURTON: That would make some sense.

2 MR. BAYQUEN: Yes, absolutely.

3 CHAIRMAN BURTON: What's the status of the
4 Department's effort to reduce drop-off and Medi-Cal coverage
5 that's happening, you know, as they're moving from welfare to
6 work, so to speak?
7

8 MR. BAYQUEN: Well, I think, first of all, and
9 most importantly, the Department has made it very clear to the
10 counties that we are going to give them extra time; that people
11 should not be losing their Medi-Cal eligibility as they go
12 through the re-determination process.

13 And, in fact, we've made accommodations for that
14 as we built the current-year budget and the budget for the
15 budget year.
16

17 So, that has been, I think, very key from what we
18 can do at the state level, is making it clear that they do have
19 the extra time, that they do not have to move quickly on the re-
20 determination process, which I think has been very confusing for
21 a lot of the counties to implement.
22

23 Beyond that, we have made it very clear -- a key
24 part in this process are the counties, because to a great
25 extent, they're the people who have the responsibility for
26 determining eligibility for Medi-Cal. And we have also made it
27 very clear to them what their responsibilities are in terms of
28 ex-parte re-determinations.

1 We've also made it clear, and made resources
2 available to them, to do outreach; to do it in both traditional
3 and nontraditional ways in the schools. I know Los Angeles
4 County Public Social Services, in particular, they're going out
5 and contacting families, and letting families know that health
6 benefits are available to them.
7

8 We're also making it very clear to the counties
9 that, even if someone has dropped off of Medi-Cal eligibility,
10 that we want them to contact those people and to see if, in
11 fact, they would be able to re-establish their Medi-Cal
12 eligibility.
13

14 So, it has been a high priority and something that
15 we've put a lot of focus and attention, but a key part of it is
16 working through the counties. But again, I think first and
17 foremost, we made it very clear that they had time; they did not
18 have to take people off, and we've made resources available
19 accordingly.
20

21 CHAIRMAN BURTON: Do we still have a program
22 either called or similar to Medically Needy Only? It was for
23 those who were not eligible for Medi-Cal, but they were, like,
24 so low on the list that we used to have a program for Medically
25 Needy Only. A medical program for non-welfare recipients, in
26 effect.
27

28 MR. BAYQUEN: There are a number of Medi-Cal
programs available for non-welfare or non-CalWORKS recipients.

1 There are a number of programs that have been made available
2 under Section 1931(b), where services are being provided, in
3 fact, to many people who are the working uninsured.

4 CHAIRMAN BURTON: Well, so that if somebody drops
5 off Medi-Cal because they're into whatever they're into, they
6 could, you know, be picked up by some of these programs?
7

8 MR. BAYQUEN: If I understand your question, I
9 believe so. I mean, Medi-Cal is no longer categorically linked
10 to CalWORKS, and there are other categories of eligibility.
11

12 CHAIRMAN BURTON: So, they would be picked up or
13 could be picked up in the other programs?
14

15 MR. BAYQUEN: Yes, sir, I believe so.
16

17 CHAIRMAN BURTON: Well, what's the status of the
18 re-inspection of Barstow?
19

20 MR. BAYQUEN: The status of that is, the Committee
21 may know, back on May the 4th, I believe it was, Thursday before
22 Senate Rules met on Secretary Alvarado's confirmation hearing,
23 the San Bernardino office received an anonymous complaint that
24 there had been a death at that facility that had occurred back
25 in February.
26

27 CHAIRMAN BURTON: We're up to that. What's the
28 status?
29

30 MR. BAYQUEN: The status is that the survey has
31 been completed. The survey is being reviewed before it is
32 finalized and submitted to Barstow. That will be done later
33

1 this week.

2 CHAIRMAN BURTON: Will you make sure we get a
3 copy?

4 MR. BAYQUEN: Yes, sir.

5 And, in fact, my staff has been in touch on a
6 weekly basis with Peter Hansel, to let him know our progress,
7 and when to expect that progress.

8 CHAIRMAN BURTON: Let the Committee know.

9 Senator Knight.

10 SENATOR KNIGHT: Well, is the Secretary of
11 Veterans Affairs, Togo West, is he aware of what's going on, and
12 is he willing accept what we're doing in terms of a plan or a
13 program to re-institute the funding to the Barstow Home?
14

15 MR. BAYQUEN: Well, as I understand, and the
16 Federal Department of Veterans Affairs, in terms of their
17 surveys, I am not going to represent that I'm an expert on that
18 at all.
19

20 But that the decision that they made last week, to
21 cut off federal funds, was not in any way tied to the work that
22 we have done or not done in terms of surveying that facility.
23

24 SENATOR KNIGHT: It must mean something that we've
25 done or not done.

26 CHAIRMAN BURTON: Means something that the VA had
27 not done, but not related to the survey they're doing, is what
28 he's saying.

1 MR. BAYQUEN: They do a totally independent
2 survey, and in fact, they do a much broader survey of that
3 facility, as I understand.

4 The responsibility the Department of Health
5 Services has at Barstow as it relates to the skilled nursing
6 facility are about 180 beds of that facility. And I believe
7 there're a total of approximately 400 beds there.
8

9 The feds, when they reviewed the facility, they
10 not only looked at the skilled nursing facility, but they also
11 reviewed the domiciliary facility, which we do not have
12 jurisdiction over. And it's my understand that a number of the
13 problems and the issues that they found related to medical care
14 were on the domiciliary side.
15

16 I believe the Department of Vets Affairs is still
17 in the process of submitting, or trying to submit, an acceptable
18 plan of corrections to the Department of Veterans Affairs.

19 SENATOR KNIGHT: But as far as your end of it is
20 concerned, you're happy with the way things are going?

21 MR. BAYQUEN: We are completing our survey, and
22 you know, it'd be premature and it would be, quite frankly,
23 illegal for me to comment on that survey until that becomes a
24 public document.
25

26 But, you know, needless to say, and it was
27 obviously in the press, there were some issues that were brought
28 to our attention. That once those issues were brought to our

1 attention, we had a responsibility to go out and re-survey.

2 And, in fact, it was very important, not only to
3 the Department; it was important to the Governor. The Governor,
4 in fact, also was a part of that decision over the weekend,
5 ordering the Department of Health Services and the Inspector
6 General to go out.

7
8 SENATOR KNIGHT: What's the difference between a
9 survey, and an inspection, and an evaluation?

10 MR. BAYQUEN: A survey is, at least from our
11 perspective, sir, is for the purposes - we do an annual survey
12 on those facilities that are receiving Medicaid dollars.

13 SENATOR KNIGHT: What's the difference between
14 that and an inspection?

15 MR. BAYQUEN: I don't know that there really is,
16 you know.

17
18 SENATOR KNIGHT: Okay.

19 MR. BAYQUEN: I use those terms interchangeably.

20 But I think from our purposes, our responsibility
21 is to do an annual survey, and then we have responsibility to do
22 re-visits if they don't pass the initial survey.

23 SENATOR KNIGHT: That's something like client and
24 patient; isn't it?

25 MR. BAYQUEN: Pardon me, sir?

26
27 SENATOR KNIGHT: That's something like client and
28 patient?

1 MR. BAYQUEN: Those terms are used interchangeably
2 in different contexts, yes.

3 SENATOR KNIGHT: One other question.

4 You indicated that you had taken care of about
5 half of the thousand vacant positions within your Department?
6

7 MR. BAYQUEN: Yes, sir.

8 SENATOR KNIGHT: And that still leaves about 500
9 or 400, whatever, but yet in the Governor's budget, he's asking
10 for 500 additional positions.

11 How does that figure?

12 MR. BAYQUEN: Well, first of all, in terms of the
13 500 vacancies that we have currently, the way the budget is
14 structured, we have a responsibility to keep those positions
15 vacant, to realize what is referred to as our salary savings.
16

17 Even though, say, a department has 100 positions.
18 We're never budgeted to fill all 100 positions. Typically,
19 you're budgeted, even though you have 100 positions, you only
20 have dollars to fill 95 of those positions. You don't receive
21 enough dollars.
22

23 So, we don't have the ability, from a fiscal
24 perspective, to fill our remaining vacancies.

25 SENATOR KNIGHT: So then, what you do is, you add
26 more vacancies, so that next time you can get more money and get
27 195 out of 200?

28 MR. BAYQUEN: Well, the additional positions we

1 will be getting for the additional responsibilities. We will be
2 filling those positions, again, less whatever the budgeted
3 salary savings requirements are that go along with those.

4 But we have, in fact, established a Recruitment
5 Unit to try to expand our capability and make sure that when
6 those additional resources come on board, that we're able to
7 fill those very promptly.

8 But at this point, we fulfilled our
9 responsibility. We can't go below the budgeted salary savings.
10 It's one of those anomalies in the way the budget is
11 constructed, but we have filled those positions that we have the
12 ability to do so.

13 CHAIRMAN BURTON: Budgets, salary savings are just
14 a bogus bookkeeping deal; right? Right.

15 MR. BAYQUEN: I could chat many an hour. I've
16 been around the budget game for a long time.

17 CHAIRMAN BURTON: Makes no sense. They give them
18 people they don't hire so they can save money. Just don't give
19 them the money and leave it in the General Fund.

20 Senator O'Connell.

21 SENATOR O'CONNELL: Can I go back to Senator
22 Knight's earlier question.

23 Do you know how much money we're losing as a
24 result of the decertification at the Barstow Home?

25 MR. BAYQUEN: The decertification by the federal
26
27
28

1 government, the only thing I know is what I read in the paper
2 myself Friday, which I think was \$300,000 per month. Although,
3 they said it was \$3.4 million, not 3.6.

4 SENATOR O'CONNELL: Will that decertification have
5 any impact in terms of the Chula Vista Home, or Lancaster, or
6 Ventura, or any of the others?
7

8 MR. BAYQUEN: I don't know, Senator O'Connell.
9 That's, again, an issue in terms of the federal VA.

10 SENATOR O'CONNELL: You're working and trying to
11 restore the status of the Barstow Home?

12 MR. BAYQUEN: Well, we are currently surveying,
13 again, for the purposes of Medicaid certification, to see if, in
14 fact, that they are in substantial compliance of that. That's
15 another issue.
16

17 I mean, we're looking specifically at SNF as
18 opposed to what the feds were looking at. They were looking at
19 the entire facility.

20 I'm sure, from the results of our re-survey, once
21 that is given to Barstow, and also from the survey that they
22 have from the feds, that that will be a blueprint for additional
23 work that they need to do to get federal certification from the
24 VA and/or to keep our certification on Title 19 dollars, on
25 Medicaid dollars.
26

27 SENATOR O'CONNELL: Thank you.

28 CHAIRMAN BURTON: Would you let us know how much

1 money it's going to cost, and whether or not -- and I don't
2 think it would -- have an impact on any of the other veterans
3 homes in the state? It certainly shouldn't.

4 MR. BAYQUEN: I will follow up, yes, sir.

5 CHAIRMAN BURTON: Thanks. And let Senator Knight
6 know about Lancaster; Senator O'Connell know about Ventura.

7 MR. BAYQUEN: I'll be pleased to follow up.

8 CHAIRMAN BURTON: Any further questions?

9 Do you have any family here to introduce?

10 MR. BAYQUEN: I do have my wife, Cathy Kinserd, is
11 here, and I'm pleased that she's here.

12 CHAIRMAN BURTON: Witnesses in support.

13 MR. FLATT: Dennis Flatt in support.

14 I've known Richard since 1972, when he was a rare
15 bird that has a lot of experience. You can't do better.

16 CHAIRMAN BURTON: Survives all sorts of changes in
17 administrations.

18 Any witnesses in opposition?

19 SENATOR HUGHES: Move the nomination.

20 CHAIRMAN BURTON: Moved by Senator Hughes.

21 All Members of the Committee who voted on the
22 Consent Calendar be recorded Aye.

23 Congratulations.

24 MR. BAYQUEN: Thank you very much.

25 CHAIRMAN BURTON: Julie Bornstein, Director,

1 Department of Housing and Community Development.

2 SENATOR KARNETTE: I'd just like to introduce my
3 cohort. I know you know about Julie Bornstein. You have her
4 biography there, and you know what she can do.

5 But I know some things about her that you may not
6 know. One of them is, she really knows what policy means,
7 because she often informs me. When I'm talking, she tells me
8 what the difference is between policy and what you want to do.

9 And I think she will be an excellent addition, and
10 will be wonderful for Housing and Community Development because
11 she knows how to get things done.

12 I've seen her. She's like a dog with a bone. She
13 never gives up.

14 And if you want somebody to get a job done, you
15 call Julie Bornstein, and it will be done.

16 And I would encourage all of you to support her.
17 You'll be very happy that you did. I have never grown tired of
18 her, and that's saying something. We've known each other for a
19 long time, and we share the same house here in Sacramento. And
20 she's still fun to go out to dinner with, and to go to movies
21 with. And even when we have disagreements, they're pleasant
22 disagreements.

23 So, I would encourage you to support her, and good
24 luck, Julie.

25 MS. BORNSTEIN: Thank you, Senator.

1 CHAIRMAN BURTON: Go ahead, Julie.

2 MS. BORNSTEIN: Mr. Chairman and Members of the
3 Committee, I am honored to be in front of you today as the
4 Governor's nominee to head up the Department of Housing and
5 Community Development.

6 I've given you a statement on both my short-term
7 and long-term goals, and out of respect for this Committee's
8 time, I'm not going to repeat anything I've given you in
9 writing.

10
11 But I did want to just lightly touch on my
12 background, both before and after I served in the Legislature,
13 to indicate that an interest in housing is a life-time goal, and
14 a life-time interest for me. As I was working my way through
15 college, I was lucky enough to get a job as a secretary in a
16 construction firm, and was able to learn the details of putting
17 a project together, and in that case, single-family home
18 projects, from reading the plans and getting the permits.

19
20 While in law school, I worked in the legal
21 department of a real estate investment trust, and I taught real
22 estate law at Cal Poly Pomona, thus giving me a good legal and
23 financial foundation to understand how the industry functions.

24
25 As a private attorney, my area of specialization
26 was real estate, and I continued also to teach, teaching
27 creative financing, mortgage credit for women, and a number of
28 other courses at UCLA and USC extension, while practicing real

1 estate law in Los Angeles.

2 I've been a licensed real estate broker since
3 1980, and have represented lenders, developers, and individuals
4 who have been involved in various and sundry aspects of real
5 estate law.

6
7 Where I really became committed to the area of
8 affordable housing is when I did some volunteer work for the
9 Coachella Valley Housing Coalition out in Riverside County.
10 That's a nonprofit organization that started by building
11 farmworker housing, but has used almost every federal and state
12 housing program, administered through HCD, to provide a diverse
13 set of housing options for a number of very different
14 populations. They have built housing that includes supportive
15 services, such as child care, medical services, housing for the
16 mentally disabled, and housing for people with AIDS and other
17 chronic physical disabilities. And through that, became highly
18 interested in seeing what I could do in this policy area.

19
20 Served on that board both before and after my
21 legislative service, and that has sparked a true commitment to
22 making sure that all Californians have housing opportunities
23 that are safe, affordable, near their work, and near their
24 services.

25
26 I'm particularly honored to have been appointed by
27 the Governor at this period of time because housing, more than
28 ever, has become a critical need in California, and it's gotten

1 the attention of the business community, local government, and
2 finally the press.

3 We have critical needs. I am delighted to be in
4 front of you in this position, hoping that we can lead this
5 Department as a real active player, and the State of California
6 as a real important partner, to all of the interests that will
7 be necessary to address our housing crisis.
8

9 With that, Senator, I'd be happy to answer any
10 questions.

11 CHAIRMAN BURTON: What would be your idea for an
12 ongoing funding source for housing?

13 MS. BORNSTEIN: Well, there are a number of
14 sources that have been used throughout the country, and we are
15 looking at all of them to be able to look at the relative
16 advantages and disadvantages.
17

18 Certainly, there is a lot to be said for
19 identifying a permanent source. Some states, I think 12 in
20 number, have used a real estate transfer tax. It's relatively
21 low in amount, but it gets paid into a permanent fund everytime
22 there's a real estate transfer.
23

24 At the moment, we're relying on General Fund
25 monies, and the Governor, of course, has suggested that our
26 budget be increased \$70 million ongoing, which would provide a
27 substantial source, one unseen in the last two decades, to
28 provide funding for affordable housing projects.

1 It's certainly a commitment of this
2 administration. It's a personal commitment of mine to look for
3 politically viable as well as practical sources of funds, to see
4 if we can address a permanent source of funding.

5 CHAIRMAN BURTON: Like what?

6 MS. BORNSTEIN: Well, the real estate transfer tax
7 is certainly one.
8

9 CHAIRMAN BURTON: All right. Now that we've
10 figured out we could get Pete Knight's vote for that, what other
11 sources are there?

12 That's a two-thirds vote, and that ain't
13 happening.
14

15 MS. BORNSTEIN: That's right, Senator. And it's
16 important to find one that's politically viable.

17 The other aspects, and certainly you know better
18 than I do, but there is a fund created through the Indian Gaming
19 Compacts that will create funds coming to the Legislature.
20 After -- I think, the first three categories deal with
21 consequences of expanded gaming in the state. Fourth category
22 is as the Legislature directs.
23

24 There is a source of fund that's already been
25 designated. We don't have any history with how much it will be,
26 but that is certainly a source of fund that nobody, at least to
27 my knowledge, yet has addressed in directing in a particular
28 way.

1 CHAIRMAN BURTON: So, the administration would
2 support earmarking that for housing funds?

3 MS. BORNSTEIN: It's not an idea that we've had a
4 chance to really bounce around yet, but it's one that would not
5 require a tax increase.

6 CHAIRMAN BURTON: But it basically would be, the
7 money goes right not into the General Fund; right?

8 MS. BORNSTEIN: As I understand, it goes into
9 what's called a Special Distribution Fund. And whether --

10 CHAIRMAN BURTON: Which basically would be a
11 General Fund.

12 MS. BORNSTEIN: It is subject to --

13 CHAIRMAN BURTON: You'd have to, one, try to pass
14 a statute to basically direct it either into housing or into
15 whatever.

16 MS. BORNSTEIN: It's subject to appropriation by
17 the Legislature.

18 CHAIRMAN BURTON: How important do you feel the
19 need is for multi-family rental units?

20 MS. BORNSTEIN: I think it's an important need,
21 along with the need for single-family housing.

22 Our particular housing situation is of such a
23 critical nature that we need a full range of housing options for
24 individuals, both rental housing and single-family housing.

25 CHAIRMAN BURTON: The Governor proposed 550?
26
27
28

1 MS. BORNSTEIN: The Governor's proposed a 500
2 million augmentation on top of the January suggestions.

3 CHAIRMAN BURTON: He proposed a \$500 million
4 housing thing?

5 MS. BORNSTEIN: Yes, he did.

6 CHAIRMAN BURTON: What can the Department do about
7 trying to deal with the homeless situation?
8

9 MS. BORNSTEIN: The major role of the Department
10 traditionally, and one that we wish to expand, is to provide
11 resources to local organizations to actually provide the
12 services.
13

14 I think the data has shown that the attempt to
15 improve the situation of homeless individuals is more than just
16 a shelter issue. It's a shelter plus services issue.

17 CHAIRMAN BURTON: Right.

18 MS. BORNSTEIN: So, we've been working with other
19 organizations, both locally and at the state level, in
20 partnership to try and couple that shelter with services.
21

22 We're looking at emergency shelters for the short-
23 term, longer term shelters with services to meet the more long-
24 term need, and then transitional housing for those whose lives
25 have been stabilized, so that they have a safe but subsidized
26 area to go, with the appropriate supportive services.

27 So, both financially, and then in cooperation with
28 those other agencies --

1 CHAIRMAN BURTON: Leaving aside the other part, do
2 you make money available to local either governments or local
3 nonprofits to construct shelters, help operate the shelters?

4 MS. BORNSTEIN: In both areas. We have a number
5 of programs. Three have been -- we have three different
6 programs that we've been operating now that work both to, in
7 some cases, finance the use of armories for cold weather
8 shelters. In others, they finance local nonprofits --

9 CHAIRMAN BURTON: That comes out of you, or out of
10 the military?
11

12 MS. BORNSTEIN: I believe in each House right now,
13 it's in a different status. In one case, it comes out of the
14 military; in the other case, it's coming out of our budget.

15 And there is a component in our budget to help us
16 coordinate with the military.
17

18 Some funds go to local nonprofits who have some
19 other shelter alternative where armories are not available or
20 viable.
21

22 We also have proposed this year additional funding
23 to provide additional facilities, as well as operational costs.

24 CHAIRMAN BURTON: One of the concerns I have is
25 that when the housing bill was before Sub 4, and the Senate
26 amount, I think, at that time was 750, and it got cut down to
27 650.
28

 And I wasn't there, but I was informed that in

1 your testimony, you said you didn't think you could spend the
2 750?

3 MS. BORNSTEIN: The question was, how long would
4 it take us to get -- in that case, we were talking about the
5 difference, I believe, between 350 million and 250 million, just
6 on the multi-family program -- how long it would take us to get
7 it out.
8

9 And traditionally, these funds are continuously
10 appropriated, because we -- what we do is, we finance projects
11 that come to us. We want the best projects. We want a diverse
12 type of project.
13

14 From a practical matter, we don't think it's good
15 public policy to put all the money out in one year, because
16 frankly --

17 CHAIRMAN BURTON: Why, if it's needed, and if it's
18 all right?

19 MS. BORNSTEIN: Because so many approvals have to
20 come from other levels of government. It is, for example,
21 easier to approve senior housing in some communities.
22

23 If we did first-come-first-serve, in a one-year
24 basis, there's a very good likelihood we would get a geographic
25 distribution that was not necessarily responsive to the need,
26 but just where jurisdictions that flooded the market with senior
27 housing projects.
28

In order to meet the diverse needs, and in some

1 cases, housing coupled with services, such as child care, or
2 such as employment services, or health care in rural areas, it's
3 important for us to be able to give notice to developers, who
4 then can get site control, put together the other funding that's
5 necessary.

6
7 That's another element of affordable housing, is
8 there're very few projects that have one or two funding sources.
9 Most of them have several. In some cases, they have to get
10 approval for tax credits, and they will be subject to deadlines
11 at those funding rounds.

12 If the funds are available over a predictable
13 period of time, such as two or three years, then you get, we
14 believe, a much better project, and you're more likely to meet
15 the needs of people throughout the state.

16
17 CHAIRMAN BURTON: Well, if you've got 650 or 700
18 this year, and you were sitting on the money, next year you
19 probably aren't going to get any money. Although the problem,
20 you know, big problem's still there, because we'd say, well, you
21 didn't spend what you got last year.

22
23 MS. BORNSTEIN: We don't think we're going to be
24 sitting on it. We'll be getting the money out on a continuous
25 basis, based on the applications.

26 CHAIRMAN BURTON: I, as the developer, I have to
27 get all my entitlements, and then come to you and get the dough?
28 How does it work?

1 MS. BORNSTEIN: Yes, and one of the things is,
2 developers need to know it's here. That's one reason the
3 baseline increase in the Governor's proposal's important,
4 because now the developer community will know that that money
5 will be here, year after year after year.

6
7 The developer has to locate the need, get
8 entitlement to the property, get the plans designed for the
9 property, start the approval process at the local level,
10 assembly in many cases four or five different funding sources,
11 and then apply for the money from us, at the same time they're
12 looking at the other funding sources.

13
14 Again, because the need is so critical, we want to
15 make sure that these projects are going to be there for the 55
16 years of our affordability restrictions, and we want to make
17 sure that they meet the need in the areas of the state where
18 it's most critical. And we are dependent on the developer.

19 CHAIRMAN BURTON: In 55 years, what may be
20 critical today may not be critical in 55 years. In 55 years,
21 I'm sure it'll be kind of run down.

22
23 What is the relationship with you and CHFA?

24 MS. BORNSTEIN: California Housing Finance Agency?

25 CHAIRMAN BURTON: Yes.

26 MS. BORNSTEIN: We work in concert in a number of
27 areas. They, of course, are not a General Fund agency, and they
28 have a separate board.

1 I, by statute, have a seat on that board, if I'm
2 in the position of Director of Housing and Community
3 Development.

4 In a number of cases, they will finance a portion
5 of a project that HCD also has money in, but they -- they have
6 an ambitious business plan. They hope to put out over a billion
7 dollars' worth of projects this year.

9 CHAIRMAN BURTON: They get their money where?

10 MS. BORNSTEIN: From bonds. They sell bonds.

11 CHAIRMAN BURTON: Revenue bonds?

12 MS. BORNSTEIN: I believe that they're bonds tied
13 to the revenues off of their projects, yes.

14 CHAIRMAN BURTON: We found when Carnie Hodge was
15 doing it, surprise, that they were building everything in Fresno
16 and the Central Valley, and nothing in the urban areas.

17 Is there any control or influence that HCD has
18 with them, except for your vote on the board?

19 I mean, that was a big thing. We constantly went
20 through him in the budget hearings.

21 MS. BORNSTEIN: I think, Senator, you'll find that
22 isn't the case any longer.

23 The board is pretty representative geographically.
24 The Secretary of Business, Transportation and Housing also has a
25 seat, and so, we can certainly consult on those --

26 CHAIRMAN BURTON: Who's the head of the board now?
27
28

1 MS. BORNSTEIN: The President of the Board is
2 Clark Wallace, and the Executive Director is Terry Parker.

3 CHAIRMAN BURTON: Is that a he or a she?

4 MS. BORNSTEIN: Terry Parker's a she.

5 CHAIRMAN BURTON: That's what Carnie was. He was
6 Executive Director. They did well in Fresno by him.
7

8 MS. BORNSTEIN: I think you'll see a geographic
9 distribution now in the projects that they fund.

10 CHAIRMAN BURTON: Well, his theory was, or his
11 excuse was, or rationalization, and I guess there was a merit to
12 it, that land was cheaper in Fresno. That's why you see that
13 whole Central Valley sprawl now, where a lot of the cities kind
14 of, they're in debt so much for everything they did to build,
15 they can't even pay for their police departments any more.
16

17 Senator Knight.

18 SENATOR KNIGHT: Well, it's interesting, but you
19 know, you talk about your budget, and trying to allocate those
20 funds, or at least dedicate the funds.
21

22 My experience is that for a project, a development
23 project, you're talking 18 months to two years, and that's a
24 pretty fast development. A lot of them, and depending on the
25 size, go a lot longer than that.

26 How do you then program your funds, year to year,
27 for those kinds of programs?

28 MS. BORNSTEIN: Senator, we would reserve the

1 funds when they're awarded. Once the project gets evaluated by
2 our Loan and Grant Committee, and it is approved for funding,
3 those funds are reserved and, in many cases, start to fund the
4 project.

5 SENATOR KNIGHT: They're then dedicated before the
6 development has final approval?
7

8 MS. BORNSTEIN: Before the development is -- when
9 you say "final approval," permitted at the local level? Or are
10 we talking about completed?

11 SENATOR KNIGHT: No.

12 MS. BORNSTEIN: Permitted?

13 SENATOR KNIGHT: Permitted at the local level.
14

15 MS. BORNSTEIN: Yes, often they are reserved with
16 conditions pending final approval. So that if the project never
17 receives its building permit from the local level, then the
18 funds would revert back and be available to be loaned to another
19 worthwhile project.

20 SENATOR KNIGHT: Then does the developer have to
21 utilize his own funding mechanisms in order to carry the program
22 for that 18 months or two years?
23

24 MS. BORNSTEIN: Most often, the developers -- and
25 most of our customer base are nonprofit, although we do deal
26 with for-profits -- but they do have some funds, certainly, to
27 keep themselves going. If they're nonprofits, then in terms of
28 their own overhead, they have other source of funds to make sure

1 that they stay in business during that time period.

2 We fund projects only. We don't fund the
3 organization itself. We fund only the real estate project.

4 SENATOR KNIGHT: One other question.

5 You talked about the homeless. Do we know how
6 many homeless there are in the State of California?
7

8 MS. BORNSTEIN: It's difficult, of course, to
9 count the homeless. There're various and sundry estimates.
10 We've seen estimates above 360,000, but of course, by the very
11 nature of the population, it's difficult to count.

12 SENATOR KNIGHT: And do we know how the population
13 fluctuates as a function of the various programs that we
14 institute?
15

16 MS. BORNSTEIN: Well, we get feedback from
17 programs as to their particular success rate. Again, it's
18 always difficult to accurately measure that data.

19 SENATOR KNIGHT: So, we have no idea whether what
20 we're doing is going to be successful or not, or whether it ever
21 is successful?
22

23 CHAIRMAN BURTON: Maybe not in this, Senator
24 Knight, but Assemblyman Steinberg did a mental health deal for
25 homeless, most of whom actually were vets, of mentally ill
26 homeless. And they had, given the number of people they were
27 dealing with, really a pretty good success rate. I forget the
28 numbers, and he could give them to you.

1 But they literally got, like, about a couple
2 hundred people off the street and into like semi-normal lives
3 with the treatment and that. So, you know, it's like everything
4 else. Something works; and something don't.

5 SENATOR KNIGHT: I'm just trying to figure out --

6 CHAIRMAN BURTON: But that was more of a mental
7 health thing than a housing thing.

8 SENATOR KNIGHT: I was just curious as to what
9 programs do work, and what programs don't work. And which ones
10 we're funding, and how that program is progressing.

11 CHAIRMAN BURTON: Well, I would think shelter
12 works only because it keeps them out of the cold weather. When
13 that's all over, it isn't anything because you need the other
14 stuff.

15 SENATOR KNIGHT: So, we don't have any programs to
16 get them off of --

17 CHAIRMAN BURTON: Well, this one did, and some of
18 the other stuff did. But yes, it's not an easy shot, I'll tell
19 you that.

20 MS. BORNSTEIN: And if I might, Senator, there's a
21 program right here in Sacramento, the Cottages, that if you have
22 time, you might want to take a look at. They do a very good job
23 of providing the supportive services that do get people out of
24 homelessness.

25 CHAIRMAN BURTON: Is there a revolving fund that's

1 available to front some of the nonprofits to do the preliminary
2 stuff that they have to do to get into the pipeline, and then
3 after they get either their loans, or who knows what, they repay
4 it back?

5 MS. BORNSTEIN: We have some programs that are
6 predevelopment loans, but we have others that are predevelopment
7 grants. Often for nonprofits, that is, of course, the riskiest.
8 If a project doesn't work out, so that they don't come in for
9 either construction or permanent funding, then it's very
10 difficult for a nonprofit to front that.

11 CHAIRMAN BURTON: Is it like a revolving fund, or
12 just out of your stuff, you do a grant and you do a loan?

13 MS. BORNSTEIN: We have two different funds. We
14 have some funds that are loans, and those do revolve. But we
15 have others that are predevelopment grants.

16 CHAIRMAN BURTON: Senator Hughes.

17 SENATOR HUGHES: I am very happy to see you going
18 for this position. I think you'll probably do a very fine job.

19 But I'm concerned, and have been for a long time,
20 about the problem with farmworker housing. And although I
21 represent an urban area, I know that agriculture is the biggest
22 industry in our state.

23 What are you planning in the Department to try to
24 help to gain more adequate housing for farmworkers? And it's
25 not necessarily for families, but also for single individuals

1 who come at harvest time, and the horrible conditions that
2 they're made to exist in.

3 Do you have any plans set?

4 MS. BORNSTEIN: Yes, Senator. We have three major
5 approaches to farmworker housing right now.

6 We have two programs that are for permanent
7 farmworker families, both on the rental side and on the single-
8 family side.

9 One of our most successful is a self-help program,
10 one that I have personal connection with because of my work at
11 the Coachella Valley Housing Coalition. That's where farmworker
12 families contribute their own sweat-equity, usually about 40
13 hours a week, and build their own homes. And that is an
14 impressive program. These are individuals who will work in the
15 fields all day, and then come home at night and on the weekend,
16 contribute an additional 40 hours' worth of labor to build their
17 own homes. They then get a deed.

18 SENATOR HUGHES: How does the state plan on
19 helping them?

20 MS. BORNSTEIN: The state funds those programs,
21 along with the federal government and, in many cases, local
22 sources. Again, no housing -- affordable housing project that
23 I'm familiar with has a single source of funds.

24 We do have in this budget request and in the
25 Governor's May Revise request, as well as the proposals that
26
27
28

1 both Houses have put into conference, additional funds for the
2 farmworker program, both in the homeownership side, including
3 self-help, and the rental side.

4 In addition to that, for migrant farmworkers, the
5 Department operates migrants -- well, we fund and support
6 migrant centers. We have 26 in this state. There is one up in
7 Madison that, I think, is in today's Sacramento Bee, that
8 provides very clean, safe housing for migrant families.

9 I will tell you, though, you've hit on an issue
10 that was one of my personal goals when I was here. And I wasn't
11 here long enough to really resolve it.

12 But I know out in my area in the Coachella Valley,
13 every year, and we just finished grape harvest, we know that we
14 need a great labor pool of migrant workers. They generally are
15 single men who migrate. And we have done nothing in the area to
16 prepare ourselves to house these individuals. And they are
17 housed in some of the worst, Third-World-type conditions that
18 one could imagine.

19 And the day that I went out to take photos to
20 share with my staff, it was 118 degrees when I was taking these
21 photos of individuals who were in town for the grape harvest.

22 So, that is something that we will look at. There
23 are, I'm happy to say, some improvements in technology, where we
24 can find, perhaps, some manufactured units that might work.

25 But there are a number of challenges there.

1 There's a challenge in sites. There's a challenge in financing.
2 There's a challenge in maintaining safe standards so that the
3 housing remains habitable. And then there is a challenge in
4 design.

5
6 But it is one that I'm personally committed to
7 working on.

8 SENATOR HUGHES: Thank you.

9 In previous administrations, when businesses were
10 interested in moving to our state, someone from your Department
11 would work with helping the business to locate housing for the
12 employees that were moving into the state, or moving from one
13 location within the state to another.

14
15 Do you do anything like that? Or do you have any
16 plans in the working? Or are you aware of any businesses that
17 are interested in locating elsewhere in the state? Do you get
18 involve?

19 MS. BORNSTEIN: We are concerned about the
20 business retention issue and business competition, given our
21 housing costs.

22
23 We have developed some good partnerships with a
24 number of business organizations throughout the state. The
25 Silicon Valley Manufacturing Group, for example, had me out to
26 speak last week, to talk about what programs would be available
27 for affordable housing in their community, because it is
28 difficult.

1 The individuals whose incomes qualify them for the
2 programs that our Department administers are the people who have
3 essential jobs that make our communities work. People like
4 accountants, and paramedics, and retail clerks, and beginning
5 teachers, and firefighters. These are folks that every
6 community needs to have living near their work.
7

8 So, we've worked with a number of business
9 organizations to indicate the necessity for their support to
10 their local decision makers for the kinds of programs that we
11 administer.

12 One of the things I've done in my past was teach
13 attitude change theory. So, one of the things we're trying to
14 do is, stop talking about affordable housing, as that seems to
15 have a stereotype that makes it harder for local decision
16 makers. We're talking about workforce housing. Because in
17 order to live in the programs that our Department administers,
18 you are working, and you're an essential member of our
19 workforce.
20

21 CHAIRMAN BURTON: Actually, a friend of mine is a
22 developer in Marin County who only talks about, she describes
23 it, housing at \$110,000. She puts the price on it.
24

25 Witnesses in support? Ever so briefly.

26 MS. MINNEHAN: I know what that means, Senator.

27 Christine Minnehan, Western Center on Law and
28 Poverty, in support of Julie Bornstein for the Directorship.

1 MR. BROWN: Marc Brown, CRLA Foundation, very
2 strongly in support.

3 MR. DAUM: Skip Daum on behalf of Common Interests
4 Developments in thousands of neighborhoods. Particularly
5 Julie's judiciousness and patient attempts at coalescing.

6 CHAIRMAN BURTON: Do you have any family here,
7 Julie?

8 MS. BORNSTEIN: No, I'm afraid my boys are taking
9 finals today.

10 SENATOR HUGHES: I'd like to move the nomination.

11 CHAIRMAN BURTON: How about hearing from the
12 opposition?

13 SENATOR HUGHES: Well, I still move it anyway.

14 CHAIRMAN BURTON: Any opposition?

15 Moved by Senator Hughes.

16 Any objection to all Members on the roll be
17 recorded Aye? Ayes 5, Noes none.

18 Congratulations.

19 MS. BORNSTEIN: Thank you very much.

20 CHAIRMAN BURTON: Timothy Dayonot, Department of
21 Community Services and Development.

22 Good afternoon, sir.

23 MR. DAYONOT: Good afternoon.

24 Honorable Chairman, Members of the Rules
25 Committee, it is my pleasure to be here today.

1 I was urged by many, many of the staffers involved
2 in this process to be brief. So, I timed my presentation, and
3 it is two minutes and nineteen seconds.

4 CHAIRMAN BURTON: So you didn't pay any attention
5 to them?

6 [Laughter.]

7
8 MR. DAYONOT: I can make it one minutes and
9 nineteen seconds.

10 As I sat in front of my computer last night,
11 thinking about what to say today, it occurred to me, compared to
12 the private sector, the process for selecting administrators is
13 much, much different in the world of government. Five Senators
14 in a public forum have the future of my career in their hands.

15
16 I further wondered to myself, how in the heck did
17 I put myself in this situation?

18 And then it occurred to me that my anxiety at this
19 hearing pales in comparison to what you, as Senators, endure
20 when thousands of voters pass judgment on whether you should
21 hold the positions you now occupy.

22
23 This confirmation hearing is, in the truest sense,
24 an exquisite example of the wisdom of our democratic process.
25 That is, an ingenious check and balance between the executive
26 and the legislative branch, to ensure the quality of many of the
27 state's appointed officials.

28 Preparing for this confirmation process more than

1 ever has led me to understand and to accept that the friction
2 that sometimes occurs generates the light of truth about the
3 candidate subject to review. This is a good and wonderful
4 thing.

5
6 You, the Senate, along with the Assembly, created
7 the Department that I hope to continue to lead. And thus, you
8 have the unquestionable right, through this confirmation
9 process, to ensure that your legislative intent is administered
10 by someone worthy of your collective vision.

11 As to my vision for the Department, it is rather
12 simple: to accomplish to the best of my abilities what you, the
13 legislative branch, have already expressed so wisely in
14 California law. That is, to ease the suffering and pain of
15 California's poor.
16

17 As to my background, while not particularly
18 spectacular, I believe it does provide evidence of my commitment
19 and passion for public sector work.

20 Whatever the outcome this afternoon, I sincerely
21 thank you for the privilege of being subject to the elegant
22 interplay of the checks and balances of this noble and necessary
23 process.
24

25 Thank you.

26 CHAIRMAN BURTON: So, basically, the majority of
27 your money is federal funds?

28 MR. DAYONOT: Yes. In fact, of our total budget,

1 only 7 percent comes from General Funds.

2 CHAIRMAN BURTON: And that would be from the
3 federal weatherization programs, and --

4 MR. DAYONOT: Community service block grants,
5 about 50 million.

6 CHAIRMAN BURTON: -- low income heating --

7 MR. DAYONOT: Yes.

8 CHAIRMAN BURTON: -- stuff and all that?

9 MR. DAYONOT: Yes. Energy assistance programs,
10 another 50 million.

11 CHAIRMAN BURTON: Community service block grants,
12 is that leftover from what, the old --

13 MR. DAYONOT: The old War on Poverty, Johnson's
14 program.

15 CHAIRMAN BURTON: Economic opportunity program.

16 MR. DAYONOT: Yes. Our Department used to be
17 called the Office of Economic Opportunity.

18 CHAIRMAN BURTON: Mervin Dymally.

19 MR. DAYONOT: Yes, yes.

20 It is a wonderful program. And the reason I think
21 that it continues to have significant value to California, it
22 allows local determination as to where that money is spent.

23 They come up with their plan. They decide what
24 they want. They have local community leaders.

25 CHAIRMAN BURTON: Anybody want to hear a little

1 piece of trivia?

2 SENATOR KNIGHT: No, but we will.

3 [Laughter.]

4 CHAIRMAN BURTON: Well, when Mervin Dymally was
5 carrying the bill to implement the Federal Economic Opportunity
6 Act, he was explaining what it did. I don't know whether you
7 knew Lou Casonovich at that time looked over, and Mervin
8 represented Watts at the height of the riots. He says, "What is
9 it? Don't you have a bunch of Kiwanis and service clubs down in
10 your area?"

11 [Laughter.]

12 CHAIRMAN BURTON: And Mervin said, "No, largely
13 it's a self-help deal. Break the window and take the TV set."

14 [Laughter.]

15 CHAIRMAN BURTON: On the community grants, do they
16 go directly to a community group? Do they go through the local
17 counties, or how does that go?

18 MR. DAYONOT: Well, the way it works is, a
19 particular entity, known as a community action agency, mostly a
20 private nonprofit, sometimes a local government, has been
21 designated to be the service provider in that particular county
22 by law; they were grandfathered in.

23 CHAIRMAN BURTON: And then, you would give it to
24 them?

25 MR. DAYONOT: Yes.

1 CHAIRMAN BURTON: And then, they would give it to,
2 like, maybe a local church feeding group?

3 MR. DAYONOT: Yes. They would -- in most cases,
4 they operate their programs themselves.

5 What they do is, they have a committee or a
6 council made up of people in poverty, and local leaders, and
7 elected officials, and providers. And they come up with an
8 annual plan. And they submit that plan to us.

9 CHAIRMAN BURTON: And then it would go to that
10 group, and then that group would operate the programs?

11 MR. DAYONOT: Yes.

12 CHAIRMAN BURTON: It's not a funnel; it's an
13 actual --

14 MR. DAYONOT: Yes.

15 CHAIRMAN BURTON: In other words, it's based, but
16 differently, on the old structures that they have?

17 MR. DAYONOT: Exactly.

18 CHAIRMAN BURTON: Just out of curiosity, what do
19 you spend more money on, heating or cooling?

20 MR. DAYONOT: Actually in California, heating is
21 the big problem. We know that in the east coast, heating is a
22 big problem.

23 Heating is still a problem here. There some
24 cooling associated with the hotter counties.

25 Weatherization component is an important part of
26
27
28

1 that, to make sure that the heat that we help pay for does not
2 escape.

3 CHAIRMAN BURTON: Can you do that in combination?
4 Don't the utilities, a lot of them, kick in on that?

5 MR. DAYONOT: Yes. There is a separate program
6 operated by the utilities in California that provide for
7 weatherization programs, in addition to the services that we
8 provide.

9 CHAIRMAN BURTON: Are you involved at all in
10 implementing the Proposition 10 deal? Children and Families
11 First Act?
12

13 MR. DAYONOT: Not to my knowledge.

14 We are involved with CalWORKS.
15

16 CHAIRMAN BURTON: Remember Proposition 10 was on
17 the ballot two years ago? It was the one that raised taxes on
18 cigarettes.

19 MR. DAYONOT: Yes.

20 CHAIRMAN BURTON: And that put money into a pot.
21 You people are not necessarily --

22 MR. DAYONOT: We are not involved with that.
23 Although, there was an inquiry to our Department to possibly
24 provide some of the accounting services for that, but that did
25 not materialize.
26

27 CHAIRMAN BURTON: Senator Knight. Senator Hughes.
28 Senator O'Connell.

1 Do you have family here, sir?

2 MR. DAYONOT: Yes, I do. My wife, Carol, is here.

3 My mom would be here, but she's having a hip
4 operation in about 20 minutes.

5 CHAIRMAN BURTON: She could have made it.

6 [Laughter.]

7 CHAIRMAN BURTON: Where's the hospital?

8 MR. DAYONOT: Las Vegas, Nevada.

9 CHAIRMAN BURTON: Couldn't have made it.

10 Witnesses in support?

11 SENATOR POLANCO: Mr. Chairman and Members, we go
12 back 20-plus years. We served under the Jerry Brown
13 administration in the Community Relations Department.

14 Well academically prepared. A real sense of
15 community. Excellent appointee and nominee.

16 Ask for your strong support.

17 CHAIRMAN BURTON: I never knew you were in the
18 Brown administration.

19 SENATOR POLANCO: Yes, sir.

20 CHAIRMAN BURTON: Thank you, Senator.

21 MR. NALDOZA: Art Naldoza, La Cooperativa, in full
22 support.

23 MR. PARKER: I'm William Parker. I'm the
24 President of the Bay Area Poverty Resource Council, and Director
25 of one of the agencies that receives funding.

1 And we are in support of Mr. Daytonot being the
2 Director. We have worked with him, and he has been very helpful
3 in helping us get through some of the problems that are out
4 there serving the poor.

5 CHAIRMAN BURTON: Thank you.

6 MR. OMOTO: Marty Omoto, Executive Director,
7 California/Nevada Community Action Association.
8

9 We are enthusiastically and strongly in support of
10 his confirmation. Thank you.

11 MS. MARTINEZ: My name is Valerie Martinez. I am
12 the President of the Association of Rural Northern California
13 Energy Providers, and I am also the Energy Services Director for
14 Redwood Community Action Agency.
15

16 And on behalf of the membership and my board of
17 directors and Executive Director of RCEA, we enthusiastically
18 support his confirmation. We think he has the skills, the
19 knowledge, and the heart to help bring this Department into --
20 what I really want to say is, we think he can do it. We think
21 he's great.
22

23 We're enthusiastic about him. We think he has the
24 skills, the people skills, to bring the north shelf and central
25 California together so that we can really do some good work to
26 help the poor.

27 CHAIRMAN BURTON: Thank you.

28 Anybody in opposition?

1 SENATOR HUGHES: Move the nomination.

2 CHAIRMAN BURTON: Moved by Senator Hughes.

3 Any objection? All Members of the Committee vote

4 Aye.

5 Congratulations.

6 MR. DAYONOT: Thank you very much.

7 [Thereupon this portion of the

8 Senate Rules Committee was

9 Terminated at approximately

10 5:00 p.m.]

11 --oo0oo--

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1 SENATOR JOHN BURTON, Chair

2 SENATOR JOHN LEWIS, Vice Chair

3 SENATOR TERESA HUGHES

4 SENATOR WILLIAM KNIGHT

5 SENATOR JACK O'CONNELL

STAFF PRESENT

6 GREG SCHMIDT, Executive Officer

7 PAT WEBB, Committee Secretary

8 NETTIE SABELHAUS, Consultant on Governor's Appointments

9 WADE TEASDALE, Consultant to SENATOR LEWIS

10 FELICE TANENBAUM, Consultant to SENATOR HUGHES

11 ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

12 DEBRA S. FARAR, Ed.D., Member
13 Trustees of the California State University

14 CHARLES REED, Chancellor
15 California State University System

16 ALEX ARTEAGA
17 California State Student Association

18 SUSAN MIEISENHEDER, President
19 California Faculty Association

20 ELIHU M. HARRIS, Member
21 California Unemployment Insurance Appeals Board

22 SENATOR DON PERATA

23 CYNTHIA K. THORNTON, Member
24 California Unemployment Insurance Appeals Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: First Governor's appointment,
Debra Farar, State University Trustees.

Good afternoon.

DR. FARAR: Good afternoon, Senator Burton and
Members of the Rules Committee.

I'm deeply honored to be considered for
confirmation to the California State University Board of
Trustees.

I would like to thank the Committee Members for
the opportunity to meet with you last Monday and earlier today,
especially at this busy time of the year with the budget. I'm
very aware of your hard work over the weekend. As an alumnus of
the CSU, I thank you for all of your support.

I have lived and worked in California all of my
life. I'm a product of California public education, and my
life's work has been in public education.

I believe I can bring to this Board the
perspective and empathy of someone who was a first generation
college student with limited resources. However, I was able to
take advantage of this great opportunity called the California
State University.

And my hope is that all students in California
will always have the opportunity that I had. First of all, I am
very fortunate that I have the ability to devote most of my time
in my role as a CSU Trustee.

As I discussed in my statement, I have been very

1 active as a Trustee to try not to refuse any request related to
2 the Trustees, because I believe the mission of the CSU is open
3 accessibility. Trustees should always be accessible and connect
4 with the students, as students are the frequently stated CSU
5 economic engine that drives the state.

6 CSU has done and will continue to do an
7 outstanding job of providing access to all qualified students in
8 California, regardless of their life situation. However, there
9 are some challenges for the CSU ahead, and I believe that most
10 of these challenges center around access.

11 In my statement, I discussed this and other
12 issues in depth, and in the interest of time, I will not restate
13 the issues, but I will be happy to answer any questions.

14 In conclusion, the Board of Trustees has an
15 awesome responsibility to ensure that this great university
16 remains accessible and affordable to all California students,
17 but I feel that we are up to the task because of the quality of
18 the Board and the leadership of the CSU.

19 I would very much like to continue to be a part
20 of the solution to these challenges. I hope you will see fit to
21 confirm me so that I can have the opportunity to give back to
22 the state that has been so very good to me.

23 Thank you very much.

24 CHAIRMAN BURTON: Senator Lewis.

25 SENATOR LEWIS: In response to overcrowding in
26 the upcoming tidal wave, what's called Tidal Wave II, some of
27 the campuses are now adopting policies where they're restricting
28 entrance based on the geography of residents of the prospective

1 students.

2 I was wondering what your thought is on that?

3 DR. FARAR: I believe that at our March Board
4 meeting in San Jose, the Trustees voted to ensure access to all
5 local students based on their -- what we call place-bound
6 students, students that are unable to, because of their age or
7 family obligations, to do anything but be place-bound.

8 I believe that we voted to guarantee access to
9 these students based on the high school they come from in the
10 local area or the community college.

11 SENATOR LEWIS: So, you're supportive?

12 DR. FARAR: Myself personally? Yes, I voted for
13 that, yes, very much.

14 SENATOR LEWIS: All right.

15 CHAIRMAN BURTON: What was the question? In
16 other words, was that dealing with San Francisco State, San
17 Francisco students and San Mateo, I guess, only or what?

18 DR. FARAR: No. What it means is, because of the
19 Tidal Wave II, we are having some campuses that are experiencing
20 impaction. That means in the past, they've been able -- all our
21 campuses have been able to take every CSU-qualified student.
22 And we know what that entails. If you want, it's the 3.0
23 average, and a certain amount of courses.

24 However, we got into a situation where we saw
25 that because we could not do that any more with impaction, a lot
26 of place-bound students were excluded, and that also included a
27 lot of minorities and first generation students. So, it was
28 determined --

1 CHAIRMAN BURTON: Place-bound means what?

2 DR. FARAR: Place-bound means students that don't
3 have the financial or ability to --

4 CHAIRMAN BURTON: They can't go at home. They
5 can't --

6 DR. FARAR: Exactly. They cannot attend at all.
7 Usually it's because of the average age of our student is older.

8 So, what the Board of Trustees did in March was
9 vote to guarantee access to all local students, we call them,
10 based on the high school they attend, or the community college.

11 What that means is, if they are CSU-qualified,
12 and they must attend that university, they will be accepted.

13 CHAIRMAN BURTON: That doesn't necessarily mean
14 you're place-bound.

15 Say you go to Lincoln High School in San
16 Francisco. You go to community college. I mean, you could
17 anywhere else, but you would still get preference?

18 DR. FARAR: I wouldn't say it was preference. I
19 think we accept all qualified. You're guaranteed entry if you
20 are CSU-qualified.

21 And a lot of these students would not
22 necessarily, if they're able, choose their local campus, too.
23 They would prefer to, perhaps, have the --

24 CHAIRMAN BURTON: I don't know if you know this,
25 and maybe Chuck might know it, how many students get turned away
26 a year, qualified students; do you know?

27 CHANCELLOR REED: Last year, we turned away about
28 800 students.

1 CHAIRMAN BURTON: For the whole system?

2 CHANCELLOR REED: For the whole system; that's
3 right.

4 CHAIRMAN BURTON: That's not nice, but that's not
5 bad.

6 CHANCELLOR REED: It's not bad, and it was the
7 first time ever. Mostly, I think, they went to a community
8 college. It was the first time that that ever happened at a
9 CSU, that an eligible student was turned away.

10 What we have asked the institutions and the
11 presidents to do, is to take fewer out-of-state and
12 international students, to make room for our own local students
13 who have a hardship in going away.

14 Now, that doesn't mean that San Diego State won't
15 take students from San Francisco, because they'll continue to do
16 that. But it was out-of-state and international students.

17 CHAIRMAN BURTON: Okay, thank you.

18 SENATOR LEWIS: I'd like to follow up on that
19 question.

20 CHAIRMAN BURTON: Charlie. Is it Charlie or
21 Chuck?

22 CHANCELLOR REED: Senator, call me anything you
23 want, just don't call me late for the budget.

24 My name is Charles Reed. That's what my mother
25 called me. Most everybody calls me Charlie. The Governor loves
26 to call me Chuck.

27 Charles, Charlie, Chuck.

28 Senator Lewis.

1 SENATOR LEWIS: I was just going to ask you, in
2 the enrollment right now, how many students do you have in the
3 system?

4 CHANCELLOR REED: About 370,000 students are in
5 our system.

6 SENATOR LEWIS: How many are out-of-state, and
7 how many are from other countries?

8 CHANCELLOR REED: About 3 percent are from
9 out-of-state and other countries.

10 SENATOR LEWIS: About 10,000.

11 CHANCELLOR REED: Frankly, that is very low for
12 systems, but it is important that the tradition of California be
13 maintained to provide opportunity in the CSU for students to get
14 a baccalaureate degree.

15 SENATOR LEWIS: Thank you.

16 SENATOR HUGHES: Either one of you that want to
17 answer this one, and may be both of you.

18 What kind of system do you have to streamline and
19 make more information available to CSU students about available
20 financial aid opportunities? Because a lot of times, students
21 are a little bits embarrassed to ask about it, and they think
22 they're going to be rejected if they seek information about it.

23 But a lot of them are needy, and what can you do?
24 What do you plan on doing to make that information available?

25 CHANCELLOR REED: Senator Hughes, we, this past
26 year, did something for the very first time.

27 I had been visiting public schools, elementary,
28 middle schools, and high schools, and talking to students,

1 faculty and parents. Found out that many Californians just
2 didn't understand what it took to go to college, including
3 courses, including grades, and including financial aid.

4 So, I came up with an idea to mail to all of the
5 middle schools and high schools a great big poster that started
6 in the sixth grade. And it says, "If you want to go to the
7 University of California," I did my good friend, Dick Atkinson,
8 a favor, but, "If you want to go to the University of California
9 or the CSU, here are the courses you take, here are the tests
10 that you have to take, here are the grades, and here's where you
11 apply for financial aid."

12 I have ended up printing 80,000 of those posters
13 because we got just waves and waves of requests, because every
14 school wanted every classroom to be able to put that on their
15 bulletin board. Then we printed more to take home.

16 A week ago Sunday, I was in Camarillo, Channel
17 Islands, and gave a little talk, and I showed the audience this
18 poster. A gentleman called me that following Monday and said,
19 "I will pay for every student in Ventura County to get a copy of
20 that poster." So, we're going to do that.

21 CHAIRMAN BURTON: Jack, what a sport.

22 [Laughter.]

23 CHAIRMAN BURTON: Would you give Mr. O'Connell
24 that guy's name? Put him on the hit list.

25 CHANCELLOR REED: I'll give him one --

26 SENATOR HUGHES: I thought you were going to say
27 that his constituent said, "I will pay for every student who
28 wants to go to college."

1 [Laughter.]

2 CHANCELLOR HUGHES: But Senator Hughes, what you
3 say is so true, that many of these students just -- they are
4 afraid. They don't know. Their parents don't know.

5 But we're going to do everything we can to get
6 the word out.

7 SENATOR HUGHES: I was concerned about the number
8 of high schools that do not give AP courses, and AP courses give
9 students a leg up. It gives them opportunity to make choices.

10 How closely do you, as a Trustee, plan on working
11 with local high schools, and you as a Chancellor, plan on
12 motivating local high schools to make those kinds of courses
13 available to CSU students?

14 DR. FARAR: I think all of the effort that the
15 CSU is making to ensure access, improve K-12, right now we're
16 doing a lot of outreach effort, especially with our remedial
17 tied in. We have \$9 million that we are giving to -- we have
18 identified the 200-plus high schools that send us the most
19 remedial students.

20 SENATOR HUGHES: That was not my question.

21 My question is, will you work with the high
22 schools to make AP courses available?

23 I guess that means working with the local boards
24 of education, because, you know, there are law suits now, and
25 one in my district, because no AP courses were made available to
26 the students that attended that high school.

27 And what can the CSU system do to encourage
28 boards of education to make these kinds of courses available to

1 their students?

2 CHANCELLOR REED: Senator Hughes, we are
3 cooperating with the University of California, who is receiving
4 outreach money and also money to develop on-line, over the
5 Internet, web-based, web-delivered, AP courses to the high
6 schools. And we will cooperate with them in delivering that to
7 the high schools.

8 So, our faculty and the UC faculty are working
9 together to do that.

10 SENATOR HUGHES: That's fine.

11 DR. FARAR: That was part of the outreach effort,
12 sending that in and then making students aware of the course
13 work that they need to take, AP especially.

14 SENATOR HUGHES: Senator Knight.

15 SENATOR KNIGHT: Thank you, Senator.

16 SENATOR HUGHES: The ball's in your court.

17 CHAIRMAN BURTON: Senator Knight, you're
18 recognized.

19 SENATOR KNIGHT: Thank you.

20 Chancellor --

21 CHAIRMAN BURTON: It's not his confirmation.

22 SENATOR KNIGHT: We've been talking to him, and
23 he's the one that's been answering, and he's the one that
24 prompted my question.

25 You're putting out posters to the high schools,
26 telling them what they have to do to go to college, where they
27 get money, all of these things, and we're just doing that now?

28 What have the public schools been doing for the

1 last 50 years in terms of preparing kids to go to school?
2 Because I thought that there was a college preparatory
3 curriculum, and the students knew that if they wanted to go to
4 college, these are the kinds of things you had to take.

5 What have we been doing?

6 CHAIRMAN BURTON: He just came from Florida two
7 years ago.

8 CHANCELLOR REED: Senator Knight, let me say that
9 the public schools, in many ways, have been overwhelmed,
10 especially the guidance counselors, in handling lots of
11 different assignments and problems in the schools, and haven't
12 had enough time to provide the kind of information that Senator
13 Hughes wants these children, students, to get.

14 I think we've made a major effort this past year.
15 We're going to continue to do that.

16 The curriculum is there. We just have to make
17 sure that parents and students understand that it's important to
18 take algebra, laboratory science, a foreign language, and learn
19 how to write.

20 SENATOR KNIGHT: And they don't know that?

21 CHANCELLOR REED: No, I'm sorry, but many of them
22 don't.

23 CHAIRMAN BURTON: Senator O'Connell.

24 SENATOR O'CONNELL: Mr. Chairman, I just wanted
25 to state and really commend Ms. Farar, as well as Chancellor in
26 the CSU system. They are ahead of the curve when it comes to
27 trying to accommodate that Tidal Wave II group that Senator
28 Lewis referenced.

1 In addition, I've had the opportunity to work
2 with Ms. Farar in the development of the 23rd CSU campus when
3 she worked for then-Lieutenant Governor Gray Davis. The summer
4 school utilization of the campuses, CSU system is much farther
5 ahead than the other branches of higher education, in my
6 opinion. They're distance-learning. We've had an opportunity
7 to participate with them.

8 And it's that kind of, I think, visionary
9 approach towards trying to accommodate the Baby Boom Echo, as
10 some people are referenced, with over 700,000 more students
11 projected for three institutions of higher learning over the
12 next ten years. It's going to be able to enable us to
13 accommodate that growth.

14 So, I just wanted to publicly thank Ms. Farar for
15 her help and support in that preparation during her work with
16 the Board for the last several years.

17 DR. FARAR: Thank you.

18 CHAIRMAN BURTON: I'm looking at the Board of
19 Trustees. I think you're pretty lucky to have a pretty good
20 Board to work with, and you've got a good Board.

21 I've said it before, but I'll say it again. I
22 really do think that the system's lucky to have you at the head,
23 because rarely -- oh, he's going to blush -- but I mean, it's
24 nice to have somebody who's an academic but also understands
25 politics, not one of those pointy-head types.

26 And I really do, I think we're quite lucky.

27 I see a family person. Do you have any others?

28 DR. FARAR: Besides them, well, my husband, Tim

1 Farar, has accompanied me here today. He's always very
2 supportive. And a very good friend and colleague, Sharon Edward
3 is here with the -- she's the coordinator of the ICC.

4 CHAIRMAN BURTON: Thank you.

5 Witnesses in support.

6 MR. ARTEAGA: Thank you, Senator Burton, Members
7 of the Committee.

8 On behalf of the California State Student
9 Association, and the 370,000 students we represent, it is my
10 pleasure to support the confirmation of Dr. Farar.

11 Since her appointment by Governor Davis to the
12 Board of Trustees, Dr. Farar has been prepared and knowledgeable
13 on all matters before the Board.

14 But most notably, Dr. Farar has been responsive
15 and respectful to the students and the student leadership of the
16 system. She's been very willing to work with us, to meet with
17 us, and talk to us about the issues that are facing the system
18 and some of the concerns that we have. And along with Dr. Reed
19 and the other Trustees, she's been very helpful in making sure
20 that those concerns come to a resolution.

21 So, again, it's my pleasure to support her
22 confirmation, and I urge your support.

23 Thank you.

24 DR. FARAR: Thank you.

25 CHAIRMAN BURTON: Other witnesses in support.

26 MS. MEISENHELDER: Thank you. My name is Susan
27 Meisenhelder, and I'm President of the California Faculty
28 Association.

1 I'm happy to be here today to speak in favor of
2 the nomination. In the past, the relationship between the
3 faculty and the Trustees has not always been the best, and we
4 certainly look forward to the new Trustees, and Dr. Farar in
5 particular, to help create a better working relationship.

6 We have a number of issues facing faculty and the
7 CSU, more broadly, that are very important right now. And we
8 believe that Dr. Farar brings the background and the
9 experience to facilitate the kind of cooperation between
10 faculty, administration, and Trustees that will help the system
11 be the best it can be.

12 Thank you.

13 CHAIRMAN BURTON: Any other witnesses in support?
14 Any witnesses in opposition?

15 SENATOR HUGHES: Move the nomination.

16 SENATOR O'CONNELL: Move.

17 CHAIRMAN BURTON: Moved by Senator O'Connell.
18 He's trying to get a campus.

19 Secretary, call the roll.

20 SECRETARY WEBB: Senator Hughes.

21 SENATOR HUGHES: Aye.

22 SECRETARY WEBB: Hughes Aye. Senator Knight.

23 SENATOR KNIGHT: Aye.

24 SECRETARY WEBB: Knight Aye. Senator O'Connell.

25 SENATOR O'CONNELL: Aye.

26 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

27 SENATOR LEWIS: Aye.

28 SECRETARY WEBB: Lewis Aye. Senator Burton.

1 CHAIRMAN BURTON: Aye.

2 SECRETARY WEBB: Burton Aye. Five to zero.

3 CHAIRMAN BURTON: Congratulations.

4 DR. FARAR: Thank you very much.

5 CHANCELLOR REED: I thank you a lot.

6 CHAIRMAN BURTON: The Unemployment Insurance

7 Appeals Board, Elihu Harris, member, a man who needs no

8 introduction.

9 MR. HARRIS: I was hoping that wasn't the case.

10 CHAIRMAN BURTON: Don.

11 SENATOR PERATA: Thank you, Mr. President,

12 Members, I'm Don Perata. My mother called my Dave. My family

13 calls me Godfather.

14 This man does not need any introduction, but it's

15 a distinct honor for me to do so, nonetheless. Elihu, as many

16 of you know, and probably all of you served with him when he had

17 a distinguished career in the State Assembly, went on to be a

18 two-term Mayor of the City of Oakland. And has dedicated all of

19 his adult life, at least all of it that I've been associated

20 with him, to public service.

21 And I think it's rightful and fitting that he be

22 now in this capacity to once again provide his great acumen and

23 dedication to our government in this capacity.

24 I'm just proud to be here to introduce him and

25 give him God speed.

26 Thank you.

27 CHAIRMAN BURTON: Elihu.

28 MR. HARRIS: Senator Perata, thank you very much.

1 Mr. Chairman and Members of the Committee, I'm
2 here to present myself for your consideration of my appointment
3 to the Unemployment Insurance Appeals Board by Governor Davis.

4 Certainly, I'm excited about the opportunity to
5 serve. When the meeting started, I was glad that Senator
6 Burton, I saw him upstairs, and I was hoping he wouldn't get
7 here before I was called. He told me that I might not get
8 confirmed if he got down here.

9 Nevertheless, obviously, this is a very important
10 Board from the standpoint of the many workers and employers
11 who're impacted by its decisions and deliberations.

12 And in the short time that I've served, I
13 certainly have been aware of that importance, and certainly of
14 the good work and the good staff that exists to assist the Board
15 in those deliberations.

16 So, I would very much appreciate any
17 consideration you would give, and certainly answer any questions
18 that you might have.

19 CHAIRMAN BURTON: Senator Lewis.

20 SENATOR LEWIS: Pass for right now.

21 CHAIRMAN BURTON: Senator Hughes.

22 SENATOR HUGHES: You've served there a little
23 time now.

24 Is Louis Barnett now the Chair or is he the Vice
25 Chair now?

26 MR. HARRIS: Mr. Barnett is the immediate past
27 Chair. Ms. Thornton, who will follow me, is the new Chair of
28 the Board.

1 SENATOR HUGHES: Are there any plans for any
2 bilingual services to the clients?

3 MR. HARRIS: There is bilingual service to the
4 clients, and there are translators available for the record to
5 be translated from the native language of the person, whether
6 they be employer or employee, to the Board.

7 SENATOR HUGHES: This is fairly new; isn't it?
8 They didn't, quite sometime ago, they didn't have it?

9 MR. HARRIS: I can't testify to the history, but
10 since I've been a member, and to my knowledge, that has been the
11 case.

12 SENATOR HUGHES: In the '99 report, they didn't
13 have it.

14 MR. HARRIS: Didn't have bilingual services?

15 SENATOR HUGHES: Right. They didn't have a
16 procedure set up for dealing with bilingual clients.

17 MR. HARRIS: Well, they certainly have it now.
18 And they certainly have translation and translators available.

19 SENATOR HUGHES: I understand that our state
20 benefits rank below 43 other states.

21 Do you support efforts to raise the UI benefits?

22 MR. HARRIS: I think, Senator, given the cost of
23 living in California, that certainly is an appropriate
24 prerogative for the Legislature to review.

25 As you know, each state sets its own unemployment
26 benefits. And I think certainly, given the economy in
27 California, and certainly the cost of living in many of the
28 areas that I know of, it certainly is a very valid issue that

1 certainly, I think, ought to be given serious consideration.

2 SENATOR HUGHES: Can you get any other benefits
3 at the same time you're getting unemployment insurance?

4 MR. HARRIS: Certainly, for certain categories of
5 unemployed people, training benefits are available. For
6 example, if you are a victim -- I won't say a victim, but
7 certainly a casualty of NAFTA or the trade resolutions, you may,
8 in fact, be given training at the same time you're getting
9 unemployment.

10 There are other retraining opportunities as well.
11 As well as, I think, you can get a waiver for training if you
12 want to go into a new field, and not for a college education,
13 but for specific training. There is the waiver for training
14 money as well as -- I think you have to pay that on your own,
15 but you can, in fact, get unemployment while you do training.

16 SENATOR HUGHES: Do you believe individuals who
17 win their appeal before the Appeals Board should be entitled to
18 payment of interest on their delayed benefit payments?

19 MR. HARRIS: I think it certainly would depend on
20 the circumstances. It depends on what the delay was due to. If
21 it some type of malfeasance on the part of the employer, or
22 negligence on the part of the state, then I think certainly that
23 would be a valid consideration.

24 SENATOR HUGHES: Thank you.

25 CHAIRMAN BURTON: Move the nomination.

26 I hesitated to ask for witnesses in opposition.

27 MR. HARRIS: I'm glad you did. The longer I
28 talk, the more this is in jeopardy, so I appreciate it.

1 [Laughter.]

2 CHAIRMAN BURTON: So you have any family here to
3 introduce?

4 MR. HARRIS: No, I have family, but they aren't
5 here.

6 CHAIRMAN BURTON: Anybody in opposition?

7 I'll move the nomination.

8 MR. HARRIS: Thank you, Senator.

9 SECRETARY WEBB: Senator Hughes.

10 SENATOR HUGHES: Aye.

11 SECRETARY WEBB: Hughes Aye. Senator Knight.

12 SENATOR KNIGHT: Aye.

13 SECRETARY WEBB: Knight Aye. Senator O'Connell.

14 SENATOR O'CONNELL: Aye.

15 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

16 SENATOR LEWIS: Aye.

17 SECRETARY WEBB: Lewis Aye. Senator Burton.

18 CHAIRMAN BURTON: Aye.

19 SECRETARY WEBB: Burton Aye. Five to zero.

20 CHAIRMAN BURTON: Congratulations.

21 MR. HARRIS: Thank you very much.

22 May I say one other thing. You know, I served as
23 Mayor for eight years. Some people thought I should have stayed
24 here and died a natural death with term limits.

25 CHAIRMAN BURTON: Cynthia D. Thornton, Member,
26 Unemployment Insurance Appeals Board.

27 MS. THORNTON: Thank you, Senator.

28 Mr. Chairman and Members of the Senate Rules

1 Committee, I'm delighted to be here, serving on the Unemployment
2 Insurance Appeals Board is a unique opportunity.

3 The CUIAB has issued over 200,000 dispositions
4 last year alone, and of those, well over 100,000, about 110,000
5 were in-person hearings.

6 Most people don't get to see how government works
7 and how the court works. So, for most people, this is only
8 contact they're going to have with government.

9 Therefore, these hearings form the basis of a
10 large segment of our population's view of the fairness of
11 government and the way our judicial system operates. It's
12 therefore very important that our agency does a good job at what
13 it does.

14 I am pleased to report that even though I've only
15 been at this agency for five months, I've attended hearings in
16 just about every field office. And from what I've observed, the
17 ALJs, the administrative law judges at our agency, do an
18 excellent job of providing full and fair hearings, and providing
19 claimants and employers with the feeling that they've been
20 treated fairly. I am proud to be associated with this group of
21 people, and with the fine work they've done.

22 I do have a letter of support from the
23 Association of California State Attorneys and Administrative Law
24 Judges that I'm informed didn't reach the Senate Committee, if
25 any of you care to see it.

26 And I'd like to answer any questions you may
27 have.

28 CHAIRMAN BURTON: Senator Hughes.

1 SENATOR HUGHES: How are your ALJs selected for
2 the Unemployment Appeals Board?

3 MS. THORNTON: The same as most states -- I'm
4 sorry, the same as most state agencies. They have to take a
5 civil service test, and then they're selected from the first
6 group.

7 Our agency --

8 SENATOR HUGHES: And who appoints them?

9 MS. THORNTON: It's selected by a hiring
10 committee with the approval of the Board.

11 SENATOR HUGHES: Hiring committee of your Board,
12 or a hiring committee of whom?

13 MS. THORNTON: The chief ALJ in the field and the
14 ALJ of the appellate operation, chief ALJ of appellate
15 operations. Chief Counsel has historically been on that
16 committee but is not currently on that committee. And then
17 personnel, what is typically on the committee.

18 There's also some other ALJs that are included in
19 the committee.

20 SENATOR HUGHES: Thank you.

21 CHAIRMAN BURTON: Senator Lewis.

22 SENATOR LEWIS: No questions.

23 CHAIRMAN BURTON: Do you have any family to
24 introduce?

25 MS. THORNTON: No, my children are getting a
26 perfect attendance award today in San Diego, so they couldn't be
27 here.

28 CHAIRMAN BURTON: Is the Governor giving the

1 award out?

2 MS. THORNTON: No, it's from a person just as
3 important, the principal.

4 CHAIRMAN BURTON: Witnesses in support?
5 Witnesses in opposition?

6 Hearing none, Senator Hughes moves approval.
7 Secretary, call the roll.

8 SECRETARY WEBB: Senator Hughes.

9 SENATOR HUGHES: Aye.

10 SECRETARY WEBB: Hughes Aye. Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye. Senator O'Connell.

13 SENATOR O'CONNELL: Aye.

14 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

15 SENATOR LEWIS: Aye.

16 SECRETARY WEBB: Lewis Aye. Senator Burton.

17 CHAIRMAN BURTON: Aye.

18 SECRETARY WEBB: Burton Aye. Five to zero.

19 CHAIRMAN BURTON: Congratulations.

20 MS. THORNTON: Thank you very much.

21 [Thereupon this portion of the
22 Senate Rules Committee hearing was
23 terminated at approximately 4:15 P.M.]

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That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of June, 2000.


EVELYN J. MIZAK
Shorthand Reporter

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3 SENATOR JOHN BURTON, Chair

4 SENATOR JOHN LEWIS, Vice Chair

5 SENATOR TERESA HUGHES

6 SENATOR WILLIAM KNIGHT

7 SENATOR JACK O'CONNELL

STAFF PRESENT

8 GREG SCHMIDT, Executive Officer

9 PAT WEBB, Committee Secretary

10 NETTIE SABELHAUS, Consultant on Governor's Appointments

11 WADE TEASDALE, Consultant to SENATOR LEWIS

12 FELICE TANENBAUM, Consultant to SENATOR HUGHES

13 ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

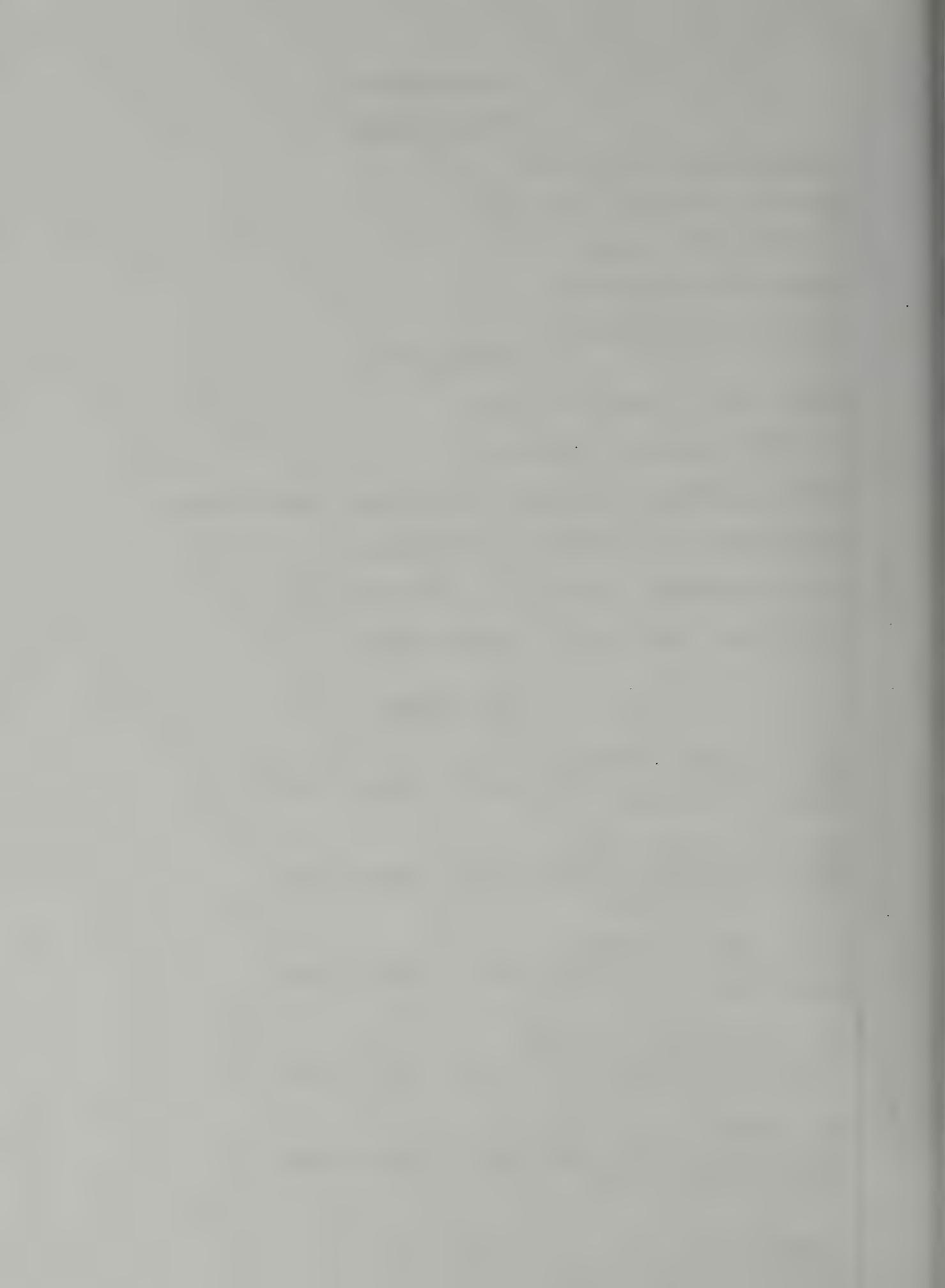
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17 LES S. BOWKER, Member,
18 California Regional Water Quality Control Board
19 Central Coast Region

20 BRUCE K. DANIELS, Member,
21 California Regional Water Quality Control Board
22 Central Coast Region

23 JOHN H. HAYASHI, Member,
24 California Regional Water Quality Control Board
25 Central Coast Region

26 GARY C. SHALLCROSS, Member,
27 California Regional Water Quality Control Board
28 Central Coast Region

KARL LONGLEY, Sc.D., Member,
California Regional Water Quality Control Board
Central Valley Region



1 DANIEL F. CROWLEY, Member,
2 California Regional Water Quality Control Board
3 North Coast Region

4 LESLIE DAHLHOFF, Member,
5 California Regional Water Quality Control Board
6 North Coast Region

7 KRISTEN D. ADDICKS, Member,
8 California Regional Water Quality Control Board
9 San Francisco Bay Region

10 DANNY W. WAN, Member,
11 California Regional Water Quality Control Board
12 San Francisco Bay Region
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Governor's Appointees:

LES S. BOWKER, Member
Regional Water Quality Control Board
Central Coast Region 1

BRUCE K. DANIELS, Member
Regional Water Quality Control Board
Central Coast Region 1

GARY C. SHALLCROSS, Member
Regional Water Quality Control Board
Central Coast Region 3

JOHN H. HAYASHI, Member
Regional Water Quality Control Board
Central Coast Region 4

Questions by SENATOR KNIGHT re:

Science Degrees 5

Motion to Confirm 5

Committee Action 6

BEA COOLEY, Ph.D., Member
Regional Water Quality Control Board
Lahontan Region 6

DANIEL F. CROWLEY, Member
Regional Water Quality Control Board
North Coast Region 6

LESLIE DAHLOFF, Member
Regional Water Quality Control Board
North Coast Region 6

KRISTEN D. ADDICKS, Member
Regional Water Quality Control Board
San Francisco Bay Region 6

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CHAIRMAN BURTON: Dr. Les Bowker, Bruce K. Daniels, John Hayashi, Gary Shallcross, that's the Central Coast Region, please come up.

I ask you all to appear in person so we could clearly emphasize the importance of enforcing our clean water laws.

For many years, Regional Water Boards did not enforce laws very aggressively. We have no reason to think any of you are objectionable, but we want you to fully understand, we care about the clean water, and we want you to enforce the laws.

All of the appointees here have answered the questions that we sent out. Why don't you just very briefly make a brief statement. If there are questions, we'll ask them, then we'll move to a vote.

DR. BOWKER: My name is Les Bowker. I've been 25-26 years now as a faculty member at Cal. Poly State University, San Luis Obispo.

I have experience, technical experience in water quality issues, particularly surface waters. I was a chairman of a committee that wrote the management plan for the Morro Bay State Estuary under AB 640.

I guess my expertise, I bring to the board a scientific background and knowledge of technical data.

CHAIRMAN BURTON: Thank you.

MR. DANIELS: Honorable Chair and Members, my

1 name is Bruce Daniels.

2 I would very much like to serve on the Central
3 Coast Regional Water Quality Control Board.

4 Since water and its quality are so important here
5 in California, this is certainly a position where someone like
6 me can make a real contribution to improving the quality of
7 Californians' lives.

8 This is also a position that can make full use of
9 my skills and experience. I studied science at MIT. I worked
10 for over 20 years at such Silicon Valley enterprises as Hewlett
11 Packard, Apple, Oracle, and now Sun Micro Systems. For five
12 years I've been researching water issues in Santa Cruz County.
13 All this helped me to understand and contribute to the complex
14 hydrology, geology, biology, chemistry, and information
15 processing aspects of water production.

16 I was the founder and president of a high tech
17 start-up company, and this allows me to appreciate the financial
18 issues of water users and to serve as the budget advisor for our
19 board.

20 I founded and serve as the chair of the Water
21 Resources Committee of our local Sierra Club. This makes me
22 treasure the value and fragility of our environment.

23 Since my appointment in December, I've attended
24 three regular board meetings, and feel I've already been able to
25 make significant contributions.

26 I respectfully ask you to confirm my appointment
27 and let me continue my job of protecting the quality of
28 California's water.

1 CHAIRMAN BURTON: Thank you.

2 MR. SHALLCROSS: Gary Shallcross.

3 Senator Burton, Committee Members, as a young
4 boy, I spent every summer with my grandfather, fishing and
5 hiking in the Sierras. He instilled in me a profound respect
6 for the environment and our responsibility as stewards to
7 safeguard it. These early experiences have instructed and
8 underlie my current commitment to the environment and water
9 issues.

10 In my professional life, I've learned how to turn
11 this respect for the environment into action. I've worked on a
12 variety of environmental and water issues, first as an aid to a
13 Santa Cruz County Supervisor, and more recently as an Assembly
14 Member's District Director. I've worked on a wide range of
15 water issues, including septic tanks, timber harvests, and water
16 district matters.

17 Currently, I sit as an ex-officio member for the
18 Assembly Member on Fort Ord Re-use Authority, Big Sur
19 Multi-Agency Task Force, and the Carmel Valley Watershed Task
20 Force, all dealing with complex water issues. I'm currently
21 working on a project that would result in the removal of a large
22 dam on the Carmel Valley River for the benefit of the steelhead
23 population. I think the anadromous fisheries are a good
24 indication of how well we're doing on water issues.

25 To this end -- to these ends, the consistent
26 enforcement of the Clean Water Act is vital. In the next
27 several decades, California's going to experience an increase in
28 population and development pressures. And we need to have our

1 Clean Water Act programs in effect to deal with that, in fact,
2 to get ahead of the curve.

3 To that end, I'd like to work with our regional
4 staff to better ensure that interaction between the regional
5 boards and other enforcement agencies are effective to ensure
6 enforcement when strong enforcement measures are indicated.

7 The Legislature has committed increased funding
8 for clean water enforcement. With this commitment and the
9 energy of the new members on the various regional boards, we
10 have a good chance to institute real protection enhancements of
11 our waters.

12 CHAIRMAN BURTON: Sir.

13 MR. HAYASHI: Senator Burton and Committee
14 Members, my name is John Hayashi. I'm a third generation
15 Japanese-American, born in San Luis Obispo and raised on our
16 family farm in Arroyo Grande.

17 Our farm is also operating in its third
18 generation, which started in the 1920s. Today we farm around a
19 thousand acres, all of which are irrigated, that produce 2,500
20 acres of fresh vegetables each year.

21 Water quality is a priority issue for all of
22 California. Agriculture is no exception, as California
23 agriculture relies heavily on good water in its part to grow and
24 maintain the quality crops that consumers around the world have
25 come to depend on. The California farmers of today are on the
26 cutting edge, leading the nation in crop production.

27 I have been appointed to the California Regional
28 Water Quality Control Board, Region Three, because of my

1 knowledge and experience associated with irrigated agriculture.
2 As a member of the board, I will work with the intent and the
3 understanding that we must all work together to maintain and
4 ensure the water quality of Region Three of this Golden State
5 forever.

6 CHAIRMAN BURTON: Thank you.

7 Any questions, Members of the Committee?

8 SENATOR KNIGHT: One question.

9 The first two gentlemen indicate you've got
10 Master of Science Degrees. What were your degrees in, just as a
11 matter of curiosity?

12 DR. BOWKER: I have a Ph.D. in zoology, with
13 minors in botony and statistics. Professionally, I'm a
14 limnologist-ecologist.

15 MR. DANIELS: My degrees are a Bachelor's and
16 Master's of electrical engineering and computer science.

17 SENATOR KNIGHT: Thank you. That's fine.

18 CHAIRMAN BURTON: Do any of you have family you'd
19 like to introduce.

20 MR. DANIELS: My wife Barbara is here.

21 CHAIRMAN BURTON: Any witnesses in opposition?
22 Witnesses in support?

23 Hearing none, Senator Lewis moves all four
24 nominees. Any reason to separate?

25 Call the roll on Items A to D.

26 SECRETARY WEBB: Senator Hughes.

27 SENATOR HUGHES: Aye.

28 SECRETARY WEBB: Hughes Aye. Senator Knight.

1 SENATOR KNIGHT: Aye.

2 SECRETARY WEBB: Knight Aye. Senator O'Connell.

3 SENATOR O'CONNELL: Aye.

4 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

5 SENATOR LEWIS: Aye.

6 SECRETARY WEBB: Lewis Aye. Senator Burton.

7 CHAIRMAN BURTON: Aye.

8 SECRETARY WEBB: Burton Aye. Five to zero.

9 CHAIRMAN BURTON: Thank you. Congratulations.

10 Next witnesses, Bea Cooley, who can't be here,
11 but we'll consider her here. She had a death in the family.
12 Daniel Crowley, Leslie Dahlhoff, Kristen Addicks, and Danny
13 Wan.

14 As you come -- in fact, I don't think you have to
15 come up right now. We've all read your comments.

16 Is there anyone who's in opposition to any of
17 these appointees? Any questions?

18 SENATOR HUGHES: Move them.

19 CHAIRMAN BURTON: Moved by Senator Hughes.

20 Anybody want to introduce their family?

21 MR. CROWLEY: Barbara, my wife. Hi.

22 CHAIRMAN BURTON: Hi.

23 Do you want to give them copies of your speech?

24 Anyway, because of the fact that we're tied up
25 over budget negotiations, and the fact that all of you are
26 eminently qualified, we're very satisfied with your responses.

27 Senator Hughes moves. We'll call the roll from E
28 to J, including Bea Cooley.

1 SECRETARY WEBB: Senator Hughes.
2 SENATOR HUGHES: Aye.
3 SECRETARY WEBB: Hughes Aye. Senator Knight.
4 SENATOR KNIGHT: Aye.
5 SECRETARY WEBB: Knight Aye. Senator O'Connell.
6 SENATOR O'CONNELL: Aye.
7 SECRETARY WEBB: O'Connell Aye. Senator Lewis.
8 SENATOR LEWIS: Aye.
9 SECRETARY WEBB: Lewis Aye. Senator Burton.
10 CHAIRMAN BURTON: Aye.
11 SECRETARY WEBB: Burton Aye. Five to zero.
12 SENATOR BURTON: Congratulations.
13 [Thereupon this portion of the
14 Senate Rules Committee hearing was
15 terminated at approximately 3:45 P.M.]

16 ---ooOoo--
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Introductory remarks before the Senate Rules Committee
Senate Confirmation Hearing for Regional Water Quality Board members, June 19, 2000

Honorable Senators,

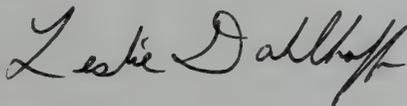
My name is Leslie Dahlhoff, I was appointed to the municipal seat on the Region 1 board in January of this year. I am the mayor of Point Arena, a small coastal city in Mendocino County.

Our city has limited staff, so I've had plenty of "hands-on" experience dealing with real municipal water quality issues. As the utilities commissioner, I work with our wastewater treatment plant operator to optimize the operations of our plant now, and to insure that it will function and meet build-out demands in the future. When money became available for road repair, I took a major role in designing and coordinating a City project to repair an important stream-side road and a collapsing streambank. The near-by Garcia River is essential to our city as the source of our municipal water supply and as a biological resource. Our community has experienced the economic and spiritual loss resulting from the decline of our once great salmon fishery. To try to recover our cold water fishery and to protect water quality, I have spent many years on the Garcia Watershed Advisory Group and represented the City in the development of the TMDL for this watershed.

I bring to our board not only a municipal perspective but also years of experience in resource planning and environmental review. I've worked successfully on committees, commissions, councils, consensus groups and boards. I'm conscientious, a good listener and a reasonable person. I appreciate the wealth of information and perspective that comes from the public, the staff and the other board members. My goal is to use this information to fairly and effectively protect and restore water quality.

Thank-you for your consideration.

Respectfully,

A handwritten signature in cursive script that reads "Leslie Dahlhoff". The signature is written in black ink and is positioned above the printed name.

Leslie Dahlhoff

404-R

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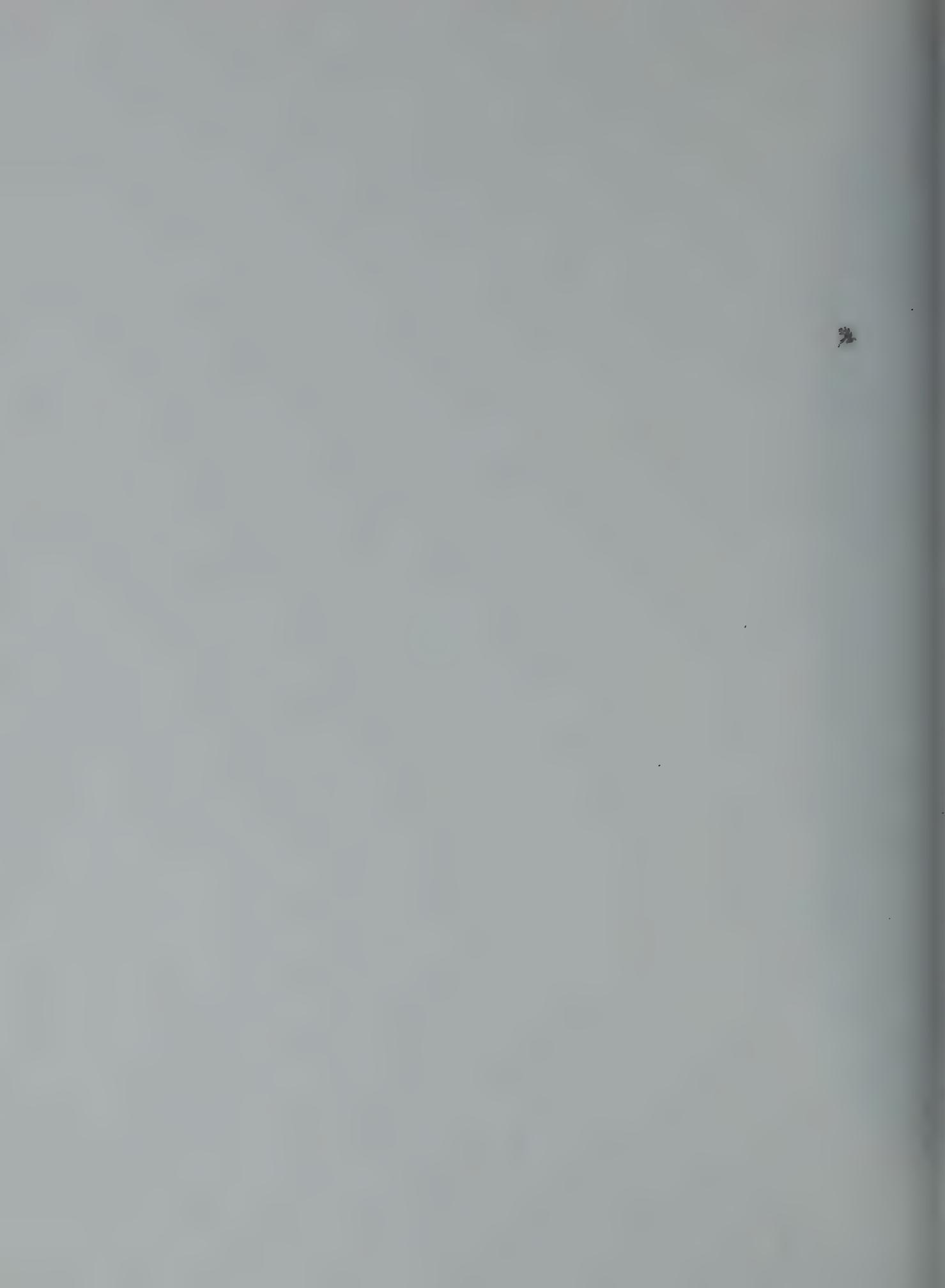
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2 SENATOR JOHN LEWIS, Vice Chair

3 SENATOR TERESA HUGHES

4 SENATOR WILLIAM KNIGHT

5 SENATOR JACK O'CONNELL

STAFF PRESENT

6 GREG SCHMIDT, Executive Officer

7 PAT WEBB, Committee Secretary

8 NETTIE SABELHAUS, Consultant on Governor's Appointments

9 WADE TEASDALE, Consultant to SENATOR LEWIS

10 FELICE TANENBAUM, Consultant to SENATOR HUGHES

11 ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

12 STEVEN R. JONES, Member
13 California Integrated Waste Management Board

14 JOSH PANE
15 California Refuse Removal Council

16 DENISE DELMATIER
17 Norcal Waste Systems, Inc.

18 CHRIS VOIGHT
19 California Association of Professional Scientists

20 MARK MURRAY
21 Californians Against Waste

22 JOSE E. MEDINA, Member
23 California Integrated Waste Management Board

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27
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1 CRAIG COPELAN, Corporate President
Professional Engineers in California Government

2

3 JULIAN CAMACHO
Hispanic Contractors Association

4

5 FRANK RAMIREZ
American GI Forum

6

7 STEVE YBARRA, Chair
Chicano-Latino Caucus
California Democratic Party

8

9 MICHAEL PAPARIAN, Member
California Integrated Waste Management Board

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11 KAREN FISH, Acting Chief Deputy Director
Integrated Waste Management Board

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Steven Jones, Member,
Integrated Waste Board.

Yes, sir.

MR. JONES: Thank you, Mr. Chairman, Members of
the Committee. My name is Steve Jones.

I'm honored to be here today as one of the
Governor's appointees to the Integrated Waste Management Board.

I was actually in this same chamber four days
short of three years ago, when I first got put on this Board and
was in front of Senate Rules on June 30th, 1997.

I came to this Board originally with 20 years of
experience in the solid waste industry, private industry.
Started as a mechanic's helper in San Francisco at Golden Gate
Disposal, and then I was the Chief Executive Officer for Cal-
Sierra Disposal in Sonora, California.

CHAIRMAN BURTON: When did you work for Golden
Gate?

MR. JONES: From 1974 through 1991.

CHAIRMAN BURTON: John Mosconi?

MR. JONES: John Mosconi was one of my mentors
and one of the people that kind of took me under their wing.
Actually, my wife's cousin.

CHAIRMAN BURTON: Leo Conti?

MR. JONES: Leo Conti, Pete Gardella.

CHAIRMAN BURTON: Pete finally retired; right?

MR. JONES: Yes.



1 CHAIRMAN BURTON: Is Leo still alive?

2 MR. JONES: Leo's still alive, but he's also
3 retired.

4 CHAIRMAN BURTON: Has anybody got any questions
5 of this man?

6 [Laughter.]

7 CHAIRMAN BURTON: Do you have anybody you want to
8 introduce? Here come a couple witnesses in support.

9 MR. PANE: Mr. Chairman, Members of the
10 Committee, Josh Pane on behalf of the California Refuse Removal
11 Council. We're in strong support of Mr. Jones.

12 MS. DELMATIER: Mr. Chairman, Members of the
13 Committee, Denise Delmatier with Norcal Waste Systems, in strong
14 support of Mr. Jones.

15 CHAIRMAN BURTON: I assume you're an industry
16 representative on the Board?

17 MR. JONES: I am, Senator, and I tried -- here's
18 the environmental.

19 MR. MURRAY: Mr. Chairman, Mark Murray with
20 Californians Against Waste, and we're pleased to support
21 Mr. Jones' appointment. He's been a great advocate on
22 developing markets for recycling.

23 And in the absence of an environmental appointee
24 for over a year on the Board, he filled in pretty nicely for us.

25 CHAIRMAN BURTON: You still don't have one on the
26 Board?

27 MR. MURRAY: We just got one, and we'll be up
28 there to support him as well.

1 CHAIRMAN BURTON: Make sure you bring Weinstein
2 with you.

3 MR. VOIGHT: Mr. Chairman, Members, Chris Voight
4 on behalf of the California Association of Professional
5 Scientists. We have nearly 200 scientists working at the Board,
6 all in strong support of his confirmation.

7 Thank you.

8 CHAIRMAN BURTON: Any witnesses in opposition?
9 Questions, Members of the Committee.
10 Nobody else cares about Leo Conti. Do you see
11 him at all?

12 MR. JONES: I don't.

13 CHAIRMAN BURTON: Nobody sees him.

14 MR. JONES: Nobody sees him.

15 SENATOR HUGHES: One little question.

16 What about the used tire stuff? What are you
17 proposing, or what is your group going to do about all these
18 used tires that pile up and cause all of these fires?

19 Do you have any solution to that?

20 MR. JONES: We are working diligently with
21 Senator Escutia's office. The administration has sent us some
22 guidelines. We hope to get the bill, 876, SB 876, in front of
23 you very shortly.

24 This will be a bill that will fund the tire
25 activities at a level it needs to be. It's been an underfunded
26 program since its inception. This will give us a chance to take
27 care of it.

28 We cannot -- I don't know if you remember,

1 Senator, when I was here three years ago. Senator Lockyer asked
2 me about the Wesley pile, and I said it was my biggest fear.

3 And while the Board put our dollars into cleaning
4 up that pile, we didn't get the whole pile taken care of,
5 obviously, and it caught on fire. So, our worst fears were
6 realized, and we need to -- we need this legislation that's
7 upcoming to be able to put a program in place that not only
8 monitors the flow of tires, but helps us with market development
9 and with eradicating all those tire problems.

10 SENATOR HUGHES: Okay, thank you.

11 CHAIRMAN BURTON: Moved by Senator Burton. Call
12 the roll.

13 SECRETARY WEBB: Senator Hughes.

14 SENATOR HUGHES: Aye.

15 SECRETARY WEBB: Hughes Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator Burton.

18 CHAIRMAN BURTON: Aye.

19 SECRETARY WEBB: Burton Aye.

20 CHAIRMAN BURTON: Hold the roll open.

21 Congratulations.

22 MR. JONES: Thank you, Senator.

23 [Thereafter, SENATORS LEWIS
24 and O'CONNELL added their
25 Aye votes, making the final
26 vote 5-0 for confirmation.]

27 CHAIRMAN BURTON: If you were at Sunset, you
28 would have gone through even faster.

1 [Laughter.]

2 CHAIRMAN BURTON: Jose Medina.

3 MR. MEDINA: Good afternoon, Mr. Chair and
4 Members of the Rules Committee.

5 I was appointed to the California Integrated
6 Waste Management Board by Governor Gray Davis on April the 14th
7 of 2000.

8 I'm pleased to have opportunity to appear before
9 you today for confirmation, and please be assured that I take my
10 appointment to the California Waste Board very seriously and
11 will discharge my duties and obligations with due diligence.

12 My previous experience as a member of the San
13 Francisco Board of Supervisors and as Director of Caltrans will
14 serve me in good stead.

15 As a member of the San Francisco Board of
16 Supervisors, I held hearings, presented resolutions, and
17 participated in public events that addressed issues relating to
18 the city's waste collection, transportation, and disposal of
19 commercial and residential waste, and solid waste recycling
20 efforts.

21 As a former representative of local government, I
22 can see a greater role at the local level for the Board.

23 During my tenure at Caltrans, I strongly
24 encouraged the use of rubberized asphalt and reuse of old
25 asphalt mixed with virgin asphalt on state roads and highways.
26 In doing so, I worked very closely with the rubberized asphalt
27 industry and with local government.

28 I also encouraged, and continue to encourage,



1 increased use of compost and mulches, giving preference to
2 recycled materials to help the state achieve its landfill
3 diversion goals.

4 I look forward to promoting a close working
5 relationship between Caltrans and the Board in ways to promote
6 the waste diversion tenets of reduce, reuse, recycle, and buy
7 recycled.

8 As noted in my statement of goals, I will assist
9 local jurisdictions in their efforts to meet the 50 percent
10 diversion goal, work with plastic manufacturers in complying
11 with state law regarding the rate of plastic container recycling
12 and the use of recycled content materials.

13 I will also participate and am currently
14 participating in an effort to address cross border environmental
15 issues relating to solid waste.

16 In closing, please be assured that the public
17 interest will be well served by my confirmation to the
18 Integrated Waste Board, and I'll be greatly honored to receive
19 your support today.

20 CHAIRMAN BURTON: Senator Hughes.

21 SENATOR HUGHES: Mr. Medina, how did you feel or
22 do you feel about the use of those old tires to repair our
23 freeway system that has a lot of holes now? Will you be
24 recommending more use for these tires for this purpose? Or does
25 it make good sense for us to use the old tires for that purpose?

26 MR. MEDINA: It does make good sense. And while
27 I was at Caltrans, again, I strongly supported and encouraged
28 the use.

1 SENATOR HUGHES: That's what you did then. What
2 are you going to do now, as you've got all the tires within the
3 palm of your hand?

4 MR. MEDINA: I am continuing to do so. I've met
5 with the new Director of Caltrans, with Randy Iwosocki, whom I
6 appointed as head of Traffic Operations and Maintenance, so that
7 we can continue to use, together, the use of tires, used tires
8 on our freeways.

9 Also, there are a number of civil engineering
10 applications that can be used as retaining walls and levees, and
11 light field and road construction. So, there's a number of
12 uses.

13 I will continue that working relationship.

14 SENATOR HUGHES: Thank you.

15 CHAIRMAN BURTON: Anybody to introduce, Jose,
16 family?

17 MR. MEDINA: My wife, Raquel Medina, is with me
18 here today.

19 MS. MEDINA: Hi.

20 MR. MEDINA: I do have couple supporters here
21 today.

22 MR. PANE: Mr. Chairman and Members, again, Josh
23 Pane on behalf of the California Refuse Removal Council, in
24 support of Mr. Medina.

25 MS. DELMATIER: Mr. Chairman, Members of the
26 Committee, Denise Delmatier with Norcal Waste Systems, in
27 support of the confirmation of Mr. Medina for the Waste Board.

28 MR. COPELAN: Mr. Chairman, Craig Copelan,

1 President of Professional Engineers in California Government,
2 representing more than 10,000 engineers employed in civil
3 service. We're in strong support of Jose Medina.

4 Thank you.

5 MR. CAMACHO: Mr. Chairman, Members of the
6 Senate Rules Committee, my name is Julian Camacho.

7 On behalf of the Hispanic Contractors Association
8 we wish to convey our strongest support for what we believe will
9 be a great asset to the Integrated Waste Management Board of the
10 State of California.

11 CHAIRMAN BURTON: Next, please.

12 MR. VOIGHT: Mr. Chairman, Members, Chris Voight
13 on behalf of the California Association of Professional
14 Scientists, who register strong support for Mr. Medina on behalf
15 of the scientists that work at the Board.

16 Thank you.

17 MR. RAMIREZ: Mr. Chair, Members, my name is
18 Frank Ramirez. I'm a member of the American GI Forum,
19 representing the National Commander in strong support of
20 Mr. Medina.

21 MR. YBARRA: Mr. Chairman and Members, my name is
22 Steve Ybarra. I am the Chairman of the Chicano-Latino Caucus of
23 the California Democratic Party.

24 We support our member, and it is important for us
25 to be on this Board because our community is the one that bears
26 the brunt of all the trash in California.

27 Thank you.

28 CHAIRMAN BURTON: Witnesses in opposition?

1 SENATOR HUGHES: Move the nomination.

2 CHAIRMAN BURTON: Moved by Senator Hughes. Call
3 the roll.

4 SECRETARY WEBB: Senator Hughes.

5 SENATOR HUGHES: Aye.

6 SECRETARY WEBB: Hughes Aye. Senator Knight.
7 Senator O'Connell.

8 SENATOR O'CONNELL: Aye.

9 SECRETARY WEBB: O'Connell Aye. Senator Lewis.
10 Senator Burton.

11 CHAIRMAN BURTON: Aye.

12 SECRETARY WEBB: Burton Aye. Three to zero.

13 CHAIRMAN BURTON: Thank you and congratulations,
14 Jose.

15 Have all of the members not to leave because
16 I've got a question to ask them after the next confirmation.

17 Michael Papanian.

18 MR. PAPANIAN: Mr. Chairman and Members, I'm
19 Michael Papanian.

20 I'm pleased to come before you as an appointee of
21 Governor Davis to the California Integrated Waste Management
22 Board.

23 I was appointed to the environmental seat on the
24 Waste Board. By law, that seat must go to an individual from a
25 nonprofit environmental organization whose purposes promote
26 recycling, water quality, and air quality. I believe my 22
27 years of service to the Sierra Club qualify me and provide the
28 background necessary to meet this mandate.

1 Additionally, I have degrees in biology,
2 psychology, and environmental planning, all of which will come
3 in handy as I deal with issues ranging from citing landfills,
4 promoting recycling and source reduction, to dealing with the
5 impacts of waste tire piles.

6 A lot has happened since the enactment of the
7 Integrated Waste Management Act of 1989. The Act set ambitious
8 goals for reducing waste, promoting recycling and composting,
9 and addressing the environmental problems associated with
10 landfills. Much progress has been made in the last decade, but
11 there's a lot left to accomplish.

12 Californians have greatly reduced the amount of
13 waste they throw away. Local governments are mostly on track to
14 achieve a 50 percent reduction in waste, and the perception that
15 there was a crisis in landfill capacity has largely
16 disappeared.

17 The Board has a wide range of programs, from
18 assisting businesses, to finding and remediating waste tire
19 problems, to promoting health and safety at dump sites, to
20 evaluating the effectiveness of local governments' solid waste
21 programs, and much more.

22 I look forward to working on these issues, and
23 I'm honored by the opportunity to serve the people of
24 California. I ask for your support of my confirmation.

25 CHAIRMAN BURTON: Senator Lewis.

26 SENATOR LEWIS: No questions.

27 CHAIRMAN BURTON: Senator Hughes.

28 SENATOR HUGHES: No questions.

1 CHAIRMAN BURTON: Senator Knight. Senator
2 O'Connell.

3 Do you have any family here?

4 MR. PAPARIAN: No, my family's not with me. I
5 think there might be a few people who want to testify.

6 CHAIRMAN BURTON: Witnesses in support.

7 MR. PANE: Once again, Members, Josh Pane on
8 behalf of the California Refuse Removal Council in support of
9 Mr. Paparian.

10 MS. DELMATIER: Mr. Chairman, Members of the
11 Committee, Denise Delmatier with Norcal Waste Systems, in strong
12 support of the confirmation of this long overdue appointment.
13 This has been a vacancy for several years now.

14 CHAIRMAN BURTON: For how long?

15 MR. PAPARIAN: It's been vacant for nearly two
16 years before my appointment.

17 CHAIRMAN BURTON: Almost two years; I'll be
18 darned.

19 MR. MURRAY: Mr. Chairman and Members, Mark
20 Murray with Californians Against Waste.

21 CHAIRMAN BURTON: Couldn't find anybody to take a
22 job at that low salary, I guess.

23 MR. MURRAY: Frankly, when the legislation in
24 1989 designated an environmental spot, along with an industry
25 spot on this Board, it was certainly our intent, and we think
26 the Legislature's intent, to appoint someone that actually came
27 from the environmental community, that had been active on these
28 issues.

1 And frankly, Mike is the first person that
2 actually fills that roll in over a decade. So, we think this is
3 a very, very long overdue appointment.

4 Certainly, one of the other members of the Board,
5 appointed by Governor Deukmejian and then Governor Wilson, fit
6 that bill, Paul Relis, but he wasn't involved in the actual --
7 with our kind of environmental networking in Sacramento, and
8 Mike fits that bill.

9 MR. VOIGHT: Again Mr. Chairman and Members,
10 Chris Voight on behalf of CAPS, Professional Scientists.

11 Like the others considered today, strong support
12 for Mr. Papanian.

13 I have had the pleasure of working with Mike on a
14 number issues over the years, and can't think of better
15 appointee in that particular spot. So, urge confirmation.

16 Thank you.

17 CHAIRMAN BURTON: Thank you.

18 Witnesses in opposition. Hearing none, moved by
19 Senator O'Connell.

20 Secretary call the roll.

21 SECRETARY WEBB: Senator Hughes.

22 SENATOR HUGHES: Aye.

23 SECRETARY WEBB: Hughes Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator O'Connell.

26 SENATOR O'CONNELL: Aye.

27 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

28 SENATOR LEWIS: Aye.

1 SECRETARY WEBB: Lewis Aye. Senator Burton.

2 CHAIRMAN BURTON: Aye.

3 SECRETARY WEBB: Burton Aye. Five to zero.

4 CHAIRMAN BURTON: Congratulations.

5 MR. PAPARIAN: Thank you.

6 CHAIRMAN BURTON: I'd like the other two
7 commissioners to come up. There's a question I want to ask.

8 During the deliberations on the budget, it was
9 determined, or I found out, that for some bizarre reason there
10 were \$7 million worth of park bonds allocated to the Integrated
11 Waste Management Board to dole out.

12 Anybody aware of that?

13 MR. JONES: Mr. Chairman, I don't know that the
14 bill had us administer that, but what that's for is to recycle
15 -- to help recycle --

16 CHAIRMAN BURTON: No, I think you guys actually
17 put it out, as I understood it. The wheels are clicking there.

18 MR. JONES: I know we're supposed to administer
19 the recycled --

20 CHAIRMAN BURTON: Somebody's got an answer there.
21 You can tell us. It's all right.

22 [Laughter.]

23 MS. FISH: This is a bond that was passed. It
24 had \$7 million, and we will administer that \$7 million to give
25 out grants.

26 Is that what you're asking? They're for --

27 CHAIRMAN BURTON: I know what they're for. I'm
28 wondering how the hell it got into a bill, one. Nobody in the

1 world knew that was there except whoever put it in.

2 MS. FISH: It was put in -- you mean in the bond
3 that was voted?

4 CHAIRMAN BURTON: Yes.

5 MS. FISH: How did it get there?

6 CHAIRMAN BURTON: Yes, if you know.

7 MS. FISH: I'm sorry, I don't.

8 CHAIRMAN BURTON: Nobody knows. Really bizarre.
9 I mean, \$7 million. Makes a lot of sense; right? I mean, you
10 guys are in the park business.

11 So basically explain, it's like they've got to
12 use recycled benches? It makes no sense to me.

13 Does anybody know? How do we get on the list? I
14 guess that's the next question.

15 MR. PAPARIAN: Actually, a lot of the market for
16 recycled goods is in parks and playgrounds. A lot of the way we
17 use used tires right now are those little rubberized mats at
18 playgrounds.

19 There's a lot of recycled content material going
20 into the structures of playgrounds, as well as the tracks that
21 people run around at parks and so forth.

22 CHAIRMAN BURTON: You give money to an existing
23 park and playground, or you can create a new park and
24 playground? Do you know?

25 MS. FISH: This is specifically for resurfacing
26 their playgrounds. It's for an existing playground.

27 CHAIRMAN BURTON: In other words, it's 7 million
28 for upkeep or for remodeling, for the want of a better word?

1 MS. FISH: Well, remodeling, not necessarily
2 upkeep. It's \$25,000 grants that have a matching component
3 where, if they're going to refit the playground to make it safer
4 using recycled playground surface --

5 CHAIRMAN BURTON: So, it's money to improve an
6 existing --

7 MS. FISH: Existing playgrounds, school
8 playgrounds, park, that type of thing.

9 CHAIRMAN BURTON: And it's got to be matching
10 funds?

11 MS. FISH: Yes.

12 CHAIRMAN BURTON: What's going to happen when,
13 after it's all said and done, out of that 7 million there's
14 6,600,000 left? It just sits there?

15 MS. FISH: This is a competitive grant. And
16 right now, we're anticipating being over-subscribed.

17 CHAIRMAN BURTON: Really?

18 MS. FISH: Yes. They will be rated competitively
19 by grant criteria that the Board has approved based on recycled
20 content.

21 CHAIRMAN BURTON: In other words, all I am is the
22 Pro Tem of the Senate, and I found out about it as we were going
23 through the budget stuff.

24 You send out RFP? Everybody who's got a park
25 knows about it? How did the word get out? Nobody in the
26 Legislature knew a damn thing about it.

27 MS. FISH: Well, what we did is, we received \$2
28 million from the Department of Education to do a similar grant

1 program. It was anticipated that this money, if it was approved
2 by the voters, because it was actually a bond, this money would
3 go to augment the program that was already in place.

4 CHAIRMAN BURTON: So, you've got an existing
5 program like this that goes to school yards?

6 MS. FISH: Yes. It goes to playgrounds.

7 CHAIRMAN BURTON: No, Department of Ed., I guess,
8 goes to school yards and not playgrounds. There's a difference.

9 MS. FISH: Right, and my understanding, this bond
10 expanded it to also include playgrounds as well as park
11 entities.

12 CHAIRMAN BURTON: Okay, thanks.

13 Any other questions? Kind of an interesting
14 concept, that's all.

15 Thank you.

16 [Thereupon this portion of the
17 Senate Rules Committee hearing was
18 terminated at approximately 4:20 P.M.]

19 --ooOoo--

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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of June, 2000.


EVELYN J. MIZAK
Shorthand Reporter



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17 10:05 A.M.

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26
27 Evelyn J. Mizak
28 Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

- 1 SENATOR JOHN BURTON, Chair
- 2
- 3 SENATOR JOHN LEWIS, Vice Chair
- 4
- 5 SENATOR TERESA HUGHES
- 6
- 7 SENATOR WILLIAM KNIGHT
- 8
- 9 SENATOR JACK O'CONNELL

STAFF PRESENT

- 10 GREG SCHMIDT, Executive Officer
- 11
- 12 PAT WEBB, Committee Secretary
- 13
- 14 NETTIE SABELHAUS, Consultant on Governor's Appointments
- 15
- 16 WADE TEASDALE, Consultant to SENATOR LEWIS
- 17
- 18 FELICE TANENBAUM, Consultant to SENATOR HUGHES
- 19
- 20 ANDY PUGNO, Consultant to SENATOR KNIGHT

ALSO PRESENT

- 21 PAULA R. ZINNEMANN
- 22 Real Estate Commissioner
- 23
- 24 SENATOR DEBRA BOWEN
- 25
- 26 LEE ADLER
- 27 California Association of Mortgage Brokers
- 28
- 29 STAN WIEG
- 30 California Association of Realtors
- 31
- 32 TOM J. BORDONARO, JR., Member
- 33 Board of Prison Terms
- 34
- 35 DAVID A. HEPBURN, Member
- 36 Board of Prison Terms
- 37
- 38 TIM YARYAN
- 39 Los Angeles Police Protective League
- 40 Association of Los Angeles Deputy Sheriffs
- 41 Riverside Sheriffs Association

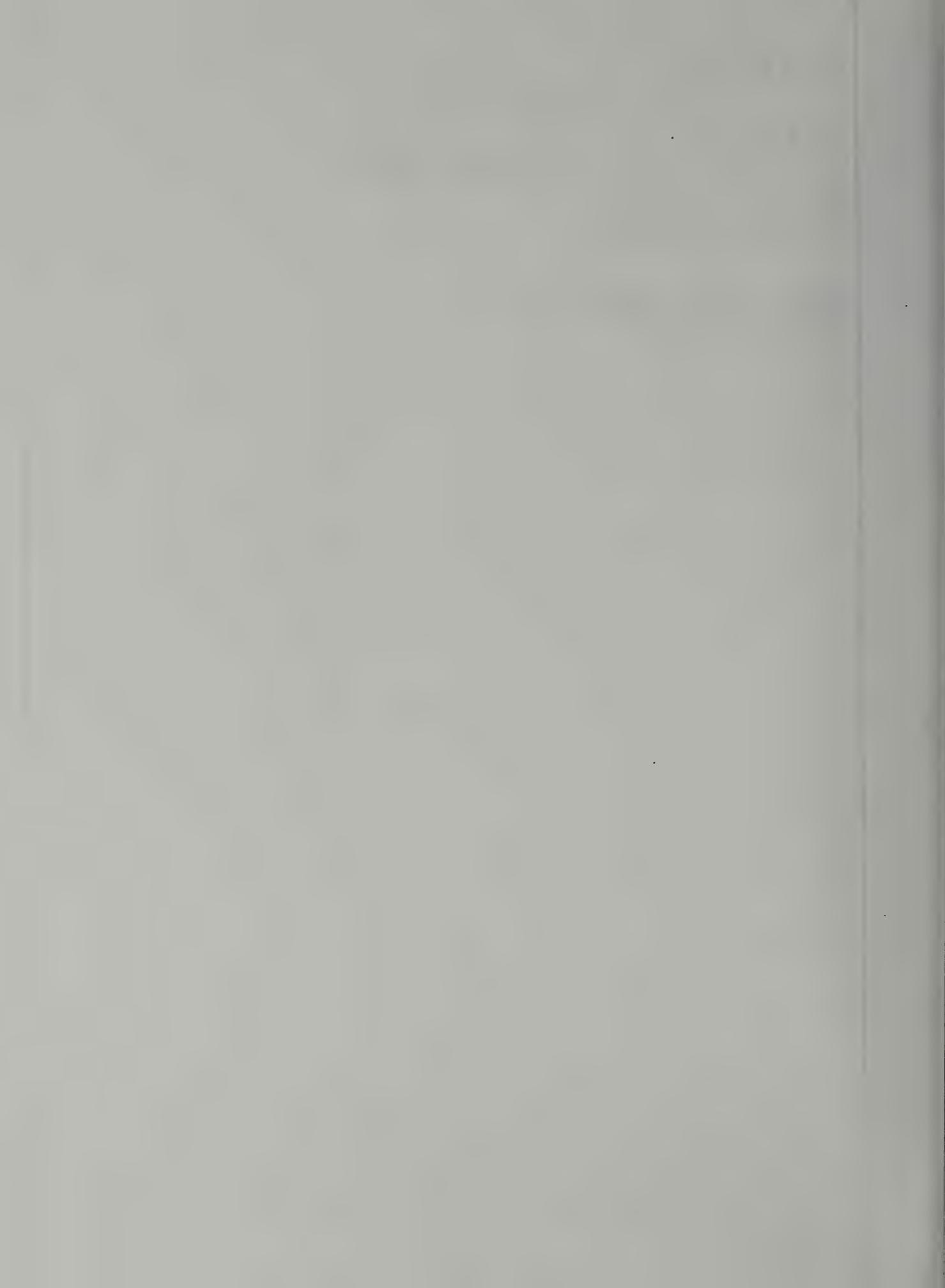
1 NANCY MCGILL
2 Californians for Parole Reform (CPR)

3 WENDY TAYLOR
4 California Attorneys for Criminal Justice

5 KATHLEEN L. GUILLEN
6 Wife of Life Inmate

7 JERRY HANSEN, Inspector General
8 Veterans Affairs

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Section 1: Introduction

The first part of the document discusses the importance of maintaining accurate records and the role of the committee in overseeing these processes.

It is noted that the committee has been working closely with various departments to ensure that all necessary information is collected and analyzed thoroughly.

The findings of the investigation are presented in detail, highlighting the areas where improvements are needed and the steps that have been taken to address these issues.

It is concluded that the committee's efforts have been successful in identifying the root causes of the problem and in implementing effective solutions.

The committee will continue to monitor the situation and report back to the board on any further developments or recommendations.

The committee members are grateful for the support and cooperation of all staff and stakeholders throughout the process.

The committee is confident that the measures taken will lead to a more efficient and effective organization.

The committee will continue to work towards the goal of improving the organization's performance and ensuring the highest standards of service.

The committee is pleased to have completed its duties and to have provided a comprehensive report on the findings of its investigation.

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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Senator Bowen.

SENATOR BOWEN: Good morning, Mr. Chair,
Committee Members.

I'd like to give all the virtues of the next
nominee's record. I'm told that I will never get a bill out of
the Senate again if I do that. So, I will briefly present to
you Paula Reddish Zinnemann, from beautiful Venice, California,
as Governor Davis' nominee to head up the Department of Real
Estate.

As you all know from background material,
Ms. Zinnemann has been involved in the real estate industry
since 1965, ran her own brokerage firm for 24 years, and worked
as a real estate mediator and arbitrator for some 13 years.

She was appointed by the Governor to the Real
Estate Commissioner's post last November, where she has, for the
past nine months, been responsible for running a 300-person
department that oversees the regulation of some 300,000
licensees.

And on that note, I would like to introduce
Ms. Zinnemann to you. Feel free to be as tough as you want.
She is from Venice where, for every 40 citizens, there are 50
strongly held opinions. So, she can take anything you have to
give her.

MS. ZINNEMANN: Thank you so much, Senator Bowen,
for taking time to be here to introduce me, and I appreciate the
risk you took in doing it.

1 I've also been advised that brevity is the order
2 of the day. So I will briefly reiterate my commitment to
3 continuing the outreach and consumer education, to look for ways
4 to streamline the subdivision process while keeping consumer
5 protections in place, and to cooperate and collaborate with
6 federal and state agencies in an effort to eliminate predatory
7 and fraudulent lending practices.

8 And without more, I will see if anyone has any
9 questions from me.

10 I also look forward to working very closely with
11 the Legislature and the Davis administration.

12 CHAIRMAN BURTON: I carried a bill a while ago
13 that dealt with basically, it was a dispute between realtors and
14 title insurance companies, and dealt with what some thought were
15 unethical actions on the part of the title insurers as far as
16 kickbacks and rebates and things of this sort.

17 There were a couple actually title insurance
18 companies that were supportive of the bill, and appalled at what
19 some of the bigger title insurance companies do.

20 Could you give me your comments on what, if
21 anything, your department could do about those actions of title
22 insurance, one.

23 And one of the issues in the bill was that of
24 retitle insurance, where basically if you got title insurance on
25 your house today and sold it to someone else, or even
26 transferred it within a month, they went back, did the whole
27 title search from Day One that you had just paid for, and
28 charged you, you know, a full fee like it was the first time

1 anything happened.

2 I wonder if you could comment on those issues.

3 MS. ZINNEMANN: Yes. It's my understanding that
4 at the time the lenders were the parties that were requiring
5 title insurance from the beginning rather than the interim. And
6 I believe that that was where the main opposition came.

7 CHAIRMAN BURTON: No, the main opposition came to
8 me from the title insurers and not the lenders, for whatever
9 reason.

10 MS. ZINNEMANN: Well, it's my understanding also
11 that the lenders are the ones that were requiring it.

12 I personally don't have a problem if the lenders
13 who do have the interim policies don't object to it, because if
14 there is a safe mechanism to ensure that they're insured for
15 that time lapse, beyond that, I have no issue with that.

16 But with respect to the rebates, we have taken
17 several of these matters to hearing, and we have not been able
18 to prevail based on the language in our statute, which requires
19 that you have to prove that it was an inducement to give the
20 title business to that title company. And at hearing, each of
21 the brokers who had been charged with taking rebates or monies
22 for goods in kind from the title company have demonstrated that
23 they had previously used that title company and given them a
24 similar percentage of their business.

25 So, we are still looking at it, and we still have
26 a few that are under investigation.

27 CHAIRMAN BURTON: Can't you adopt a regulation?

28 MS. ZINNEMANN: We can look at doing that.

1 CHAIRMAN BURTON: Can't you do it?

2 MS. ZINNEMANN: We can try to do it. We will
3 certainly look at that.

4 CHAIRMAN BURTON: What do you mean, try? You
5 either do it or you don't.

6 MS. ZINNEMANN: Well, we will, you know, have our
7 legislative people prepare some kind of legislation.

8 CHAIRMAN BURTON: No, I said regulation.

9 MS. ZINNEMANN: It's a regulation that -- and I
10 believe the title company regulations say that it's a per se
11 violation.

12 Ours requires proof that it was done as an
13 inducement for the business.

14 CHAIRMAN BURTON: Who regulates the title
15 insurers?

16 MS. ZINNEMANN: Department of Insurance.

17 CHAIRMAN BURTON: So, the Insurance Commissioner,
18 if you refer -- you might have better luck with the new one than
19 you would have with the old one.

20 Do you refer to the Insurance Commissioner the
21 title insurance companies that the realtor allegedly accepted
22 the gratuity from?

23 MS. ZINNEMANN: It was the opposite.

24 When there were some title insurers that were
25 fined by the Insurance Commissioner -- without hearing or
26 without findings of fact, I might add -- they referred a list of
27 brokers who had received this compensation to the department,
28 and the department investigated all of these cases, took several

1 of them to hearing, some of which we lost. One of the cases, we
2 entered into a stipulation and settlement agreement with him.

3 But the referrals have come from the title
4 company. And to my best knowledge, we've not had any consumer
5 complaints on the issue.

6 The other thing that I think that you should know
7 in the title industry, it's not just title company and real
8 estate brokers. The title industry, for a long time, has gone
9 to solicit business in a similar manner from escrow companies
10 and from lenders as well.

11 So, I think that if the title companies would
12 stop doing this, and I know there are some of them that have
13 very strict policies against giving money or offering goods to
14 real estate companies, escrow companies, or lenders, I think
15 that's where it has to stop.

16 CHAIRMAN BURTON: Does the statute prohibit you
17 from doing a regulation that strengthens your ability to deal
18 with this stuff?

19 MS. ZINNEMANN: Our statute or theirs?

20 CHAIRMAN BURTON: Yours.

21 MS. ZINNEMANN: Our statute requires us to prove
22 that the compensation was an inducement for the business. And
23 frequently, the inducement for the business, at least this is
24 what the brokers have responded, is the service given by that
25 particular title company.

26 As someone who has been familiar and involved in
27 this business for a long time, I can tell you that there are
28 certain companies whose services are above and beyond the

1 others. And as a practitioner, I would use that company.

2 I never was in a position where any of them ever
3 offered me anything, nor did I ask for anything, but I dealt
4 with the company when I could that gave me best service.

5 CHAIRMAN BURTON: The question that I asked was,
6 is there anything in the statute that precludes a stronger
7 regulation that may make it easier to crack down?

8 MS. ZINNEMANN: No, there's nothing that
9 precludes it. It would just require an amendment to it or a
10 revision of it. And I will certainly --

11 CHAIRMAN BURTON: I'm talking about a regulation.
12 I'm not talking about a statute.

13 MS. ZINNEMANN: No, I used the wrong term. I'm
14 talking about our regulations as well.

15 CHAIRMAN BURTON: Well, I'd like you to take a
16 look at that, maybe, and let us know.

17 MS. ZINNEMANN: I will definitely do that.

18 CHAIRMAN BURTON: Senator Hughes.

19 SENATOR HUGHES: No questions.

20 CHAIRMAN BURTON: Senator Lewis.

21 CHAIRMAN BURTON: Pleasure of the Committee?

22 SENATOR HUGHES: Move it.

23 CHAIRMAN BURTON: Moved by Senator Hughes.

24 Excuse me, do you have any family here you want
25 to introduce?

26 MS. ZINNEMANN: No, I don't.

27 CHAIRMAN BURTON: Witnesses in support, briefly.

28 MR. ADLER: Mr. Chairman, Members, I'm Lee Adler,

1 representing California Association of Mortgage Brokers.

2 We very much support the confirmation of
3 Commissioner Reddish-Zinnemann.

4 MR. WIEG: Mr. Chairman, I'm Stan Wieg with the
5 California Association of Realtors.

6 We also support the Commissioner's
7 confirmation.

8 Thank you.

9 CHAIRMAN BURTON: Witnesses in opposition.
10 Nobody from a title insurance company.

11 Moved by Senator Hughes. Call the roll.

12 SECRETARY WEBB: Senator Hughes.

13 SENATOR HUGHES: Aye.

14 SECRETARY WEBB: Hughes Aye. Senator Knight.

15 SENATOR KNIGHT: Aye.

16 SECRETARY WEBB: Knight Aye. Senator Lewis.

17 SENATOR LEWIS: Aye.

18 SECRETARY WEBB: Lewis Aye. Senator Burton.

19 CHAIRMAN BURTON: Aye.

20 SECRETARY WEBB: Burton Aye. Four to zero.

21 CHAIRMAN BURTON: Congratulations.

22 MS. ZINNEMANN: Thank you very much.

23 CHAIRMAN BURTON: Leave the roll open.

24 [Thereafter, SENATOR O'CONNELL
25 added his Aye vote, making the
26 final vote 5-0 for confirmation.]

27 CHAIRMAN BURTON: Bordonaro.

28 MR. BORDONARO: Good morning. I do appreciate

1 the opportunity, and I am honored to be here, to have been
2 appointed by two governors to the Boards of Prison terms. And I
3 do appreciate the opportunity to come before you today.

4 I'd also like to just mention that we also have
5 the honor and the challenge of acting as Governor Davis'
6 oversight to the ADA Compliance Unit inside the Board of Prison
7 Terms, where a transition plan has been turned over in an
8 attempt, and I think not only an attempt, but will comply with
9 changes to ensure that inmates' rights are being met under the
10 Americans with Disabilities Act. And that, again, is moving
11 forward, I think, in a very positive manner, and I look forward
12 to continuing that oversight and aiding those that are charged
13 with that compliance.

14 But I ask for your favorable consideration today
15 and look forward to any questions.

16 CHAIRMAN BURTON: How do you prepare for the
17 hearings when you have hearings? How far in advance do you get
18 the materials about the inmates?

19 MR. BORDONARO: Well, when the hearing's inside
20 the institutions, the materials are there for us when we arrive.
21 Usually on the Monday morning, we'll be there at a minimum of an
22 hour early to start preparing.

23 The hearings that are -- when we have en banc
24 hearings, we receive the packets from Sacramento anywhere from
25 four to five days in advance so that we can review those. For
26 instance, tomorrow there's four before us as a full board. So,
27 I've had those packets since last week.

28 So, depending on whether those are before the

1 full body, or when we're inside the institutions as a
2 three-member panel.

3 But at the very minimum, an hour or so beforehand
4 do we have the packets, unless it's a case, for instance, the
5 Rosenkrantz case. I had a plethora of information weeks
6 beforehand.

7 But the information's there. You would have to
8 obviously dig into it. But again, prepare it beforehand, and
9 then -- that would be on a Monday.

10 On a Tuesday, Wednesday, Thursday hearings, I
11 usually take the packets home with me the night before, the
12 Board packets, files, to prepare for the next day.

13 CHAIRMAN BURTON: How many hearings would you
14 have, like, say in a day in the institution?

15 MR. BORDONARO: In a full day, up to six, and
16 sometimes seven, possibly eight.

17 CHAIRMAN BURTON: How could you possibly, within
18 an hour -- and I don't mean you. Just anybody -- give justice
19 to eight people's lives, what you're going to do with them,
20 within an hour?

21 MR. BORDONARO: Most of the information that I
22 think that is relevant comes out of the hearing itself.
23 Obviously, the preparation ahead of time is very important, but
24 the inmates themselves are the ones that come before with the
25 most of the facts and the information that's required to make
26 the judgment.

27 So, during the hearing, most of those relevant
28 facts also are brought forth.

1 CHAIRMAN BURTON: I know this isn't you, but I
2 would ask you to take it back.

3 If they can give you the stuff Monday morning,
4 they ought to give it to you Friday afternoon, so maybe in
5 between football, or whatever, you have a weekend maybe to
6 prepare yourself. It would be like walking into a policy
7 hearing with that particular file.

8 MR. BORDONARO: Sure, sure. And again, Monday
9 mornings when you get to the institution, you've got the
10 information. You have to prepare for the next day by taking
11 home the packets for that next day.

12 CHAIRMAN BURTON: I understand, but I think on
13 Fridays they ought to get the information to you on Fridays.
14 I'm sure that nobody working in the office is working Saturday
15 and Sunday to put this stuff in order.

16 MR. BORDONARO: Sure.

17 CHAIRMAN BURTON: Have you had training on the
18 battered women syndrome issues? Did they give you training as a
19 Commissioner?

20 MR. BORDONARO: A month ago, we had a training
21 session with actually all the Board Members were there,
22 including quite a few of the Deputy Commissioners. And we had,
23 I believe, it was around three hours of training with -- I can't
24 remember his name right now -- but it was through a renowned
25 criminologist that had studied the issue for many years.

26 And it was very enlightening, very enlightening,
27 very helpful.

28 CHAIRMAN BURTON: Now, Governor Wilson, you

1 served how long under Governor Wilson?

2 MR. BORDONARO: December of '98 to May of '99.

3 CHAIRMAN BURTON: Five months, and you've been on
4 this one --

5 MR. BORDONARO: Since May of this year.

6 CHAIRMAN BURTON: This is the first hearing that
7 you've done?

8 MR. BORDONARO: Yes.

9 CHAIRMAN BURTON: On this issue.

10 Have you held any hearings down there at
11 Frontera?

12 MR. BORDONARO: No.

13 CHAIRMAN BURTON: You haven't been there yet.

14 In 1992, about 40 percent of parolees were
15 returned for technical violations. In 1999, that jumped up to
16 58 percent. Last year, over 70,000 parolees were sent back to
17 prison on technical violations, a number that is significantly
18 higher than people sent to jail for crimes committed and found
19 guilty.

20 What is the theory on so many people being sent
21 back on technical violations?

22 MR. BORDONARO: I'm a little bit at a
23 disadvantage, because I'm not an expert. I'm not sure what a
24 technical violation is.

25 CHAIRMAN BURTON: Might be flunking a drug test;
26 might be associating with undesirable people.

27 MR. BORDONARO: Well, I imagine that the theory
28 would be, if you've done time for a serious crime, then you

1 would be expected to walk the line, so to speak.

2 I would think that if drugs were part of the
3 commitment offense, then that's something that they should be
4 held a little closer, you know, held a little more liable for.

5 If it wasn't part of the commitment offense, then
6 I think that should be something that should be looked at.

7 But I think that each case individually would
8 have to be examined.

9 CHAIRMAN BURTON: Would it not make sense that if
10 somebody, let's say they, you know, came up dirty in a urine
11 test, that they may try to think of some other type of outside
12 programs, as opposed to laying it on the state taxpayers, that
13 kind of cost?

14 MR. BORDONARO: You know, that's a very valid
15 question, a very valid concern.

16 One of the things that has always concerned me,
17 and inmates themselves have told me, when talking to lifers
18 about what their parole plans are, and speaking of the fact, the
19 fact, that there's not a lot of support available afterward, I'm
20 not sure what support is available afterwards.

21 I think that's one of the areas that the
22 Legislature should take a very close look at, because we have
23 inmates that come before us that have nowhere to go. There's
24 halfway houses that aren't available. There's jobs that aren't
25 available. There's programs that aren't available. So, their
26 chances of making it on the streets are reduced.

27 I think, again, that's one of the concerns that I
28 have.

1 One of the things that I've seen is the support
2 network is rather thin after they are released. And I'm not
3 sure where that came from historically, why that's true.

4 But I think you have a valid point.

5 CHAIRMAN BURTON: Senator Lewis.

6 SENATOR LEWIS: I was just curious, in terms of
7 yourself and the other membership on the Board, what kind of a
8 psychological impact does it have knowing that the Governor is
9 probably going to veto any early parole? Does that have an
10 impact on you following the individual merits of each and every
11 case?

12 MR. BORDONARO: And I have talked -- actually,
13 we've had this conversation before us when we have an inmate who
14 is found suitable for parole, and when we determine that, and at
15 the hearing, so many times the inmates will ask, what's going to
16 happen?

17 And I view it as my fellow Commissioners do, that
18 it's not our job to second-guess what the Governor's going to
19 do. It's our job to find suitability.

20 If we find they're suitable for parole, we give
21 them the parole date, and then rest of the process works its way
22 through.

23 The Governor's never spoken to me about how to
24 vote, and I've never spoken to him about what he will do when he
25 receives them.

26 But I do take every case and try to remove myself
27 from all those outside influences, which I believe I do a pretty
28 good job at. And if I find an inmate as suitable for parole,

1 then we'll set the date and let it go from there.

2 SENATOR LEWIS: Thank you.

3 CHAIRMAN BURTON: Senator Hughes.

4 SENATOR HUGHES: When you were in the Assembly,
5 did you have any major penal institutions in your district?

6 MR. BORDONARO: I have the California Men's
7 Colony in San Luis Obispo that is located in the district, yes.

8 SENATOR HUGHES: Do you think, perhaps, that was
9 one of the reasons that you were chosen by the previous
10 Governor, and then chosen by this one, because of the experience
11 that you had on the Board?

12 MR. BORDONARO: I can't really say. Quite
13 possibly, but I can't say for sure.

14 SENATOR HUGHES: Did you tour that institution
15 when you were in the Assembly? And what was your attitude
16 toward inmates then, and is it the same now?

17 MR. BORDONARO: Yes, I did tour the facility.

18 And I believe that my view of the inmates has
19 probably somewhat changed. When you tour a facility, you don't
20 have -- there's no interaction with the inmates. When you're on
21 the Board, there's quite a bit of interaction with the inmates.

22 CMC is a -- I guess you can call it a Cadillac
23 for a state prison. It's not a very, relatively speaking -- I'm
24 not saying prison's fun where ever you're at or incarcerated
25 at -- but CMC, we have there at CMC a lot of very, I mean,
26 they're good inmates. They've earned their way, so to speak, to
27 CMC.

28 So, my attitude has changed because you actually,

1 with the interaction, you get to know them. And, you know, with
2 that, the attitude has definitely changed somewhat.

3 SENATOR HUGHES: Tell me a little bit about you.
4 You belong to a lot of organizations, and I see one here is the
5 North County Women's Resource Center and Shelter. What is that
6 organization about? What you have you learned from that?

7 MR. BORDONARO: It's a nonprofit organization in
8 the northern part of San Luis Obispo County that provides
9 housing for women who are battered and their families. Provides
10 transitional living arrangements. Helps those that are battered
11 to break away from that abusive situation. Gives them a place
12 to live for as long as we possibly can.

13 The houses are full. We have hardly any
14 vacancies. In fact, the board is now trying to buy a second
15 home so that we can triple our capacity.

16 But it does provide counseling and resources to
17 transition those -- out of those types of abusive
18 situations.

19 SENATOR HUGHES: Since you have been on the Board
20 of Prison Terms, you've said that your attitudes have changed a
21 lot. How?

22 MR. BORDONARO: Well, I think people -- we find
23 people that can change. And I've found some that, you know,
24 years ago, I may have, if I was on the outside, would have said
25 this is a type of person will never change.

26 But I think that I've learned probably the
27 biggest lesson, is that people can change.

28 SENATOR HUGHES: Thank you.

1 CHAIRMAN BURTON: Senator Knight.

2 SENATOR KNIGHT: No questions.

3 SENATOR LEWIS: Move confirmation.

4 CHAIRMAN BURTON: Are they moving along on the
5 ADA compliance stuff? I know you, in theory, were supposed to
6 be there, but I don't think you were in the loop at the
7 beginning.

8 MR. BORDONARO: Right. I am definitely in the
9 loop now, and they're moving forward.

10 CHAIRMAN BURTON: Are you pushing them?

11 MR. BORDONARO: Yes. As you know, it's --

12 CHAIRMAN BURTON: Knowing how quickly we did this
13 stuff in the Assembly?

14 MR. BORDONARO: Yeah.

15 As you know, Senator, it's never as quick as you
16 want it to move. But I do think that they are moving forward,
17 and it is positive movement. But it's a slow process, and it's
18 a massive process.

19 We had to, for instance, just for an example,
20 every jail facility where any type of hearings were held had to
21 be surveyed, which was a massive undertaking in and of itself,
22 was to survey those jail facilities. And surprisingly, some of
23 the brand-new jails --

24 CHAIRMAN BURTON: Were noncompliant?

25 MR. BORDONARO: Were noncompliant. And so, the
26 transition plan, obviously, every single one of those that are
27 noncompliant, we found ways to at least temporarily have
28 hearings in a manner which does meet with the ADA, even if it's

1 a temporary fix until the jail can make a permanent fix.

2 In other words, moving hearing rooms, or
3 providing equipment on a temporary basis for the hearing
4 impaired, and things such as that.

5 CHAIRMAN BURTON: How many prisons are there
6 where you hold hearings?

7 MR. BORDONARO: I don't know.

8 CHAIRMAN BURTON: Roughly. Eight? Ten?

9 MR. BORDONARO: At least. Probably half of the
10 prisons that we have, which is -- how many prisons do we have?

11 CHAIRMAN BURTON: I was going to ask you.

12 MR. BORDONARO: I think there's 32.

13 CHAIRMAN BURTON: So it would be 16.

14 Is there more than one hearing room that you use
15 in the prisons where you go?

16 MR. BORDONARO: Some of them have more than one
17 hearing room, yes.

18 CHAIRMAN BURTON: The point I was trying to make,
19 it was 16 sites. It wasn't an enormous task to walk in each
20 site and say --

21 MR. BORDONARO: No. The county jails are the
22 problem, are the ones that were the enormous task. We have --
23 there are hearings at the county jails for relocation and other
24 items.

25 The lifer hearings are in the prisons. That was
26 a simpler task because of the number.

27 CHAIRMAN BURTON: Are they all done?

28 MR. BORDONARO: Yes.

1 CHAIRMAN BURTON: Would you know why the
2 Armstrong case is being appealed?

3 MR. BORDONARO: No, I don't. I don't know why
4 that is. I still don't fully understand.

5 CHAIRMAN BURTON: Do you have any family here?

6 MR. BORDONARO: No, I don't.

7 CHAIRMAN BURTON: Do you have any friends?

8 MR. BORDONARO: I hope so. I hope they're all on
9 the Committee.

10 CHAIRMAN BURTON: Witnesses in support.
11 Witnesses in opposition.

12 Moved by Senator Lewis.

13 I'm going to vote to confirm you because I
14 believe that, one, we've dealt with each other being against and
15 being for certain issues, working together and working apart.
16 But I think you've got the guts and the courage and the
17 sensitivity to do what you think is right, notwithstanding what
18 other pressures there's going to be.

19 You may not always do things the way I see them,
20 but I've always had the utmost respect for you. I think, by and
21 large, I'm responsible for your appointment because it was like,
22 "We'll show you. We'll give you Bordonaro," which was fine with
23 me because I've always trusted you and always found you to be --
24 and I really don't even believe in the phrase -- but I have
25 always found you to be a compassionate conservative.

26 MR. BORDONARO: Thank you. I wish I had a
27 copyright on that phrase.

28 CHAIRMAN BURTON: Well, conservative is when we

1 kick people off welfare. Compassion is, we try to find a
2 charity to give them food because we took the money out of their
3 mouth.

4 But that doesn't fit you anyway.

5 Call the roll.

6 SENATOR KNIGHT: Based on that, I'm going to vote
7 for him.

8 SECRETARY WEBB: Senator Hughes.

9 SENATOR HUGHES: Aye.

10 SECRETARY WEBB: Hughes Aye. Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye. Senator Lewis.

13 SENATOR LEWIS: Aye.

14 SECRETARY WEBB: Lewis Aye. Senator Burton.

15 CHAIRMAN BURTON: Aye.

16 SECRETARY WEBB: Burton Aye. Four to zero.

17 CHAIRMAN BURTON: Congratulations.

18 MR. BORDONARO: Thank you very much.

19 [Thereafter, SENATOR O'CONNELL

20 added his Aye vote, making the

21 final vote 5-0 for confirmation.]

22 CHAIRMAN BURTON: Mr. Hepburn.

23 MR. HEPBURN: Good morning.

24 Mr. Chairman and Members, thank you for this
25 opportunity to consider my confirmation as Chairman of the Board
26 of Prison Terms.

27 I've now spent nearly 30 years of my life in
28 public service as a Naval Reservist, a police officer, and now

1 as Chairman of the Board of Prison Terms. I believe that during
2 that service, I have earned a reputation for fairness,
3 integrity, and professionalism.

4 In the year I've served as a Commissioner and now
5 Chairman, I have been impressed by the overall professional
6 competence and commitment of the members of the Board, as well
7 as the organization as a whole.

8 At the same time, I have become concerned about
9 much of the criticism and litigation that has been directed at
10 the Board. No organization can survive if it isn't willing to
11 regularly take a critical look at itself and determine if there
12 might not be ways to improve its operation. Inasmuch as the
13 functions of the Board have a profound impact on public safety,
14 I see the necessity to give thoughtful consideration to any
15 changes to our policies and procedures.

16 Nonetheless, I believe we should keep an open
17 mind to input from any source that will enhance the way the
18 Board carries out its mission. I believe we can continue to
19 improve as an organization without compromising public safety.

20 Thank you, and I'm ready to answer any questions
21 the Committee may have.

22 CHAIRMAN BURTON: What do you mean about improve
23 as an organization?

24 MR. HEPBURN: I think there always -- I'm never
25 satisfied with the status quo. I think there are always
26 opportunities to do things better, to be more efficient, to
27 increase the fairness of our procedures. I think we need to
28 take a look at our regulations and the way that we operate, see

1 if it's the best way in all cases to do it. And always be open
2 to change as the necessity arises.

3 CHAIRMAN BURTON: Would you give direction to
4 whoever your staff is to see that the Board members,
5 commissioners, whoever are going into Monday morning hearings
6 get the information Friday afternoon?

7 MR. HEPBURN: Yes, as a matter of fact, this is
8 an issue that I need to resolve with CDC, because their
9 personnel, to a large extent, put that information together for
10 us.

11 CHAIRMAN BURTON: We know they ain't working on
12 the weekends putting it together.

13 MR. HEPBURN: No. I've had some preliminary
14 discussions with the Director, Mr. Terhune, and I need to have
15 some follow-up discussions with some of their staff. And we
16 intend to do that.

17 CHAIRMAN BURTON: Would it be helpful if we
18 talked to Cal?

19 MR. HEPBURN: He's totally, totally willing to do
20 it. It's a matter of working out the details and getting the
21 paper work to him, but that's my intention.

22 Commissioners will have that information in their
23 hand on Fridays, to study on Friday or over the weekend, so when
24 they get to the institution on Monday, they'll be far ahead of
25 the game.

26 CHAIRMAN BURTON: Lifers have, I guess, taken
27 somebody's life?

28 MR. HEPBURN: Not in every case. We have some

1 that are kidnapping cases. I think mayhem falls under that
2 category also. Usually kidnapping with the intent to commit
3 extortion or robbery falls in that category also.

4 CHAIRMAN BURTON: And kidnapping is defined as
5 taking somebody from place to place. I could take you from here
6 outside, and that's kidnapping.

7 MR. HEPBURN: Yeah, it doesn't require a lot of
8 movement.

9 CHAIRMAN BURTON: Do you know, and you may not,
10 that the ones that are given life would probably be the ones
11 that take somebody and drive them off, and lock them in a barn,
12 as opposed to somebody that grabs somebody and took them from
13 here to there?

14 MR. HEPBURN: Not necessarily. It depends on
15 what kind of crime it's connected to. And if they're doing it
16 with the intent to commit a robbery, or intent to --

17 CHAIRMAN BURTON: Unless you're doing it to write
18 a book, you're doing it to do something. I mean, to commit a
19 robbery.

20 If I took you at gun point, and took you over to
21 the next hearing room and said, "Give me your money," I've
22 kidnapped you for the intent to commit robbery?

23 MR. HEPBURN: Yes, that would be potentially a
24 life sentence.

25 CHAIRMAN BURTON: Whereas, if I left you in the
26 room and said, "Give me your money," it ain't.

27 MR. HEPBURN: Correct.

28 CHAIRMAN BURTON: And of those who commit who

1 take another person's life, do we know what percentage are an
2 individual who one time took an individual's life without any
3 prior criminal behavior, as opposed to, you know, a bank robber
4 that's shot a couple people or had a long prison record?

5 MR. HEPBURN: I don't have a specific figure on
6 that for you. My sense from doing a significant number of
7 hearings myself over the past year is, the vast majority have
8 fairly significant criminal records.

9 CHAIRMAN BURTON: How about, because statistics
10 seem to indicate that the lowest rate of recidivism is among
11 people who commit murder. You know, the husband against the
12 wife; the wife against the husband; boyfriend-girlfriend, some
13 individual thing.

14 And that being the case, what would be the logic
15 of, assuming that somebody had good record in prison, had some
16 place to go after prison, of keeping them in?

17 MR. HEPBURN: That would certainly be one of the
18 factors in determining whether or not they're suitable, one of
19 the things we'd look at, is there criminal history.

20 So, somebody who doesn't have that history,
21 doesn't have a history as a juvenile, not a track record of
22 committing violent crimes, I would say, yeah, it's more likely
23 that they might be found suitable for parole.

24 CHAIRMAN BURTON: Any of them ever get found
25 suitable?

26 MR. HEPBURN: Yes.

27 CHAIRMAN BURTON: Any of them ever get out?

28 MR. HEPBURN: Yes.

1 CHAIRMAN BURTON: Do you know how many?

2 MR. HEPBURN: I can give you some numbers from
3 the past couple of years.

4 CHAIRMAN BURTON: That would be good enough.

5 MR. HEPBURN: In 1999, there were 21 occasions on
6 which the Board found somebody suitable for parole. There were
7 actually 5 that got released.

8 CHAIRMAN BURTON: So, the Governors, whoever they
9 were, held back 16?

10 MR. HEPBURN: Somewhere in the process, either a
11 decision review may have disapproved a decision or perhaps --

12 CHAIRMAN BURTON: Doesn't the Board control
13 decision review?

14 MR. HEPBURN: Yes.

15 CHAIRMAN BURTON: Okay, so, they were given a
16 date by the hearing officer, or whoever it is, the first person.
17 Then en banc, under hearing review, they got stiffed?

18 MR. HEPBURN: In decision review, some of them
19 will be disapproved in decision review for various reasons.
20 Those that are still approved --

21 CHAIRMAN BURTON: What would the reasons be?

22 MR. HEPBURN: Might be a decision that's not
23 supported by the evidence.

24 CHAIRMAN BURTON: I mean, at least in the law,
25 you can't second-guess the trier of fact unless there's not
26 scintilla of evidence to support their conclusion.

27 So, if you've got you as the person hearing, and
28 me as the person trying to get out. And you've heard

1 everything; you read the file.

2 Who are these four guys who weren't part of that
3 to decide that there's something there that I missed?

4 MR. HEPBURN: The reason for the decision review
5 process is to correct errors, or omissions, inconsistency in our
6 decisions by the panels. That's what decision review looks
7 at.

8 Sometimes the Board, frankly, misses things, the
9 panel that does the hearing. So, we have to have the decision
10 review process to correct those errors.

11 CHAIRMAN BURTON: How many times do you have a
12 decision review process that agrees with the lower finding?
13 Once it goes to decision review, you're screwed.

14 MR. HEPBURN: Oh, no. Every granted date gets
15 decision reviewed, so a significant number of those make it
16 through decision review and get approved, and moved on to the
17 Governor's Office.

18 CHAIRMAN BURTON: Okay, it then moves to the
19 Governor, and the Governor stiffes them.

20 In other words, it was 5 out of 21. So, decision
21 review took care of some, or didn't, as the case may be, and
22 then the Governor took care of the rest, and 5 got out.

23 MR. HEPBURN: I also have to point out that those
24 5 were actually -- I believe all of them were from dates that
25 were given a previous year. So, they're not necessarily from
26 the same group of 21, because of a delay process.

27 CHAIRMAN BURTON: So, nobody might have got out
28 of the 21?

1 MR. HEPBURN: Maybe. I can't say for sure on way
2 or the other.

3 CHAIRMAN BURTON: Why is the Armstrong case being
4 appealed?

5 MR. HEPBURN: It was -- I don't understand all
6 the legal complexities. I'm not an attorney.

7 I know from my perspective what's important to me
8 is, we have the resources to implement our ADA compliance plan,
9 which we're following through on. You've heard from
10 Commissioner Bordonaro already on that issue. We're committed
11 to doing that. We're doing it. We're implementing it.

12 CHAIRMAN BURTON: So, the Board of Prison Terms
13 did not appeal?

14 MR. HEPBURN: That was a decision made by the
15 Attorney General's Office and the administration. It wasn't our
16 call.

17 CHAIRMAN BURTON: The Attorney General's Office
18 is appealing, or the Governor's Office is appealing?

19 The Attorney General's just a lawyer. He takes
20 direction. I can't see the Attorney General going in and
21 appealing an ADA case myself.

22 MR. HEPBURN: No, I think they're taking
23 direction from the administration.

24 CHAIRMAN BURTON: So it's the Governor's Office
25 determined to appeal it?

26 MR. HEPBURN: I would assume so, yes.

27 CHAIRMAN BURTON: It seems that your comment is
28 in a little variation with the Governor's view, that no inmate

1 convicted of murder should be paroled.

2 As I heard you, if you have somebody without a
3 record that, for whatever reason, was one of these people that
4 really was a -- not a nice thing -- but was a one-time, if you
5 pardon the pun, shot at taking a life of another, that in most
6 instances probably would have been either familial or close,
7 that they are not, ipso facto, ineligible to have a parole date,
8 in your mind?

9 MR. HEPBURN: No, actually, nobody is. And the
10 Board acts independent of the Governor's review authority, of
11 course.

12 CHAIRMAN BURTON: So, his point of view does not
13 impinge upon your independent judgment.

14 In other words, is there a feeling aboard among
15 the members, "Why should we do this, because he's going to turn
16 it down anyway?"

17 MR. HEPBURN: No. Certainly, I think it would be
18 disingenuous to say I'm not familiar with his remarks and his
19 policy on it.

20 CHAIRMAN BURTON: It would be disingenuous to say
21 that you --

22 MR. HEPBURN: That I was not familiar with his
23 comments.

24 CHAIRMAN BURTON: Okay.

25 MR. HEPBURN: But the Board acts independently.
26 We regularly recommend parole dates, and then we submit them to
27 the Governor's Office, and he takes his action accordingly.

28 CHAIRMAN BURTON: How many time have you voted an

1 inmate a parole date?

2 MR. HEPBURN: I don't know the exact number, but
3 I would say probably six or eight times.

4 CHAIRMAN BURTON: Out of how many cases?

5 MR. HEPBURN: Out -- of I've probably done -- I
6 became Chairman in March, so I didn't do too many hearings after
7 that, from August to March. Maybe 500 cases.

8 CHAIRMAN BURTON: The Chair doesn't do hearings.

9 MR. HEPBURN: Does occasionally. I did them last
10 week, and I'm doing them this week.

11 CHAIRMAN BURTON: Is it more just sort of like an
12 administrative --

13 MR. HEPBURN: It's the administrative head of the
14 Board, yes.

15 CHAIRMAN BURTON: Is there a policy, either
16 expressed or implied, limiting the number of parole dates
17 granted to lifers?

18 MR. HEPBURN: No.

19 CHAIRMAN BURTON: I'm a little bit concerned with
20 what Mr. Bordonaro said, that he was, I think, a total of about
21 nine months or something on the Board before there was any
22 battered women's syndrome teaching, or lessons, or whatever it
23 is.

24 I would hope that when members come on, there is
25 an immediate, I guess, indoctrination is the right word or the
26 wrong word, on that issue. And conceivably, maybe you could
27 give a periodic upgrading on what's the status of what kind of
28 program that you have on that.

1 MR. HEPBURN: Tom was not on the Board for a
2 period of time last year when we did -- we had training in
3 December. So, since I've been on the Board in August, we've had
4 training twice for the Commissioners, and in December we did it
5 for Commissioners and all the Deputy Commissioners also.

6 And then we just had the most recent training
7 that he referred to here about a month ago with Dr. Bowker, who
8 did some additional training.

9 Then we have a cadre of Deputy Commissioners who
10 are specifically trained, so when they go to document -- every
11 lifer who's been in the institution for three years gets what's
12 called a documentation hearing, look at all the issues in their
13 case. The Deputy Commissioners who do those hearings at the
14 women's institutions are trained to identify the BWS issues and
15 determine whether or not they require additional investigation.

16 CHAIRMAN BURTON: Last year, there was a process
17 of having new regs on BWS. What's the status of them, if any?

18 MR. HEPBURN: We don't -- we haven't formulated
19 any new regulations. The current -- our current regulations
20 allow us to use that information, just like any other
21 information that a Commissioner considers at a hearing. If
22 there are BWS issues present, they would be considered as
23 mitigating factors, just like, perhaps, some other mitigating
24 factor, whether or not someone is suitable for parole.

25 And if they establish that they're suitable for
26 parole, and setting an actual date and using -- we have a matrix
27 in our regulations, that would be used as a mitigating factor in
28 the matrix.

1 CHAIRMAN BURTON: Why shouldn't it be "shall"
2 instead of they "can" consider it? Because what we're talking
3 about is, we're talking about women convicted before the legal
4 defense was available to them. You know, not unlike what some
5 county jails and states are doing on DNA.

6 That the ones that I met and testified down at
7 Frontera, and I think there were like nine, and maybe one,
8 maybe, would have still been in there even if they were able
9 inform use the battered women's syndrome defense.

10 Why shouldn't it be a mandated thing to consider?
11 Doesn't mean it's locked in.

12 MR. HEPBURN: I don't see any logical reason why
13 we should say that it should be mandated they consider the
14 information, just like -- which they do. They consider it just
15 like they do all other --

16 CHAIRMAN BURTON: You said they "may," which
17 means they may not. May means, you know, you might or you
18 might not.

19 Shall means, this is an issue to look at.

20 MR. HEPBURN: Yes, and we -- and we just have not
21 formulated the regulations yet. It is something I'm looking at.
22 I understand the --

23 CHAIRMAN BURTON: It's very easy. You say
24 "shall" instead of "may". I mean, it's like a one-word
25 amendment.

26 MR. HEPBURN: But there are degrees, too, in --

27 CHAIRMAN BURTON: It doesn't say you shall let
28 them out. It says you shall consider it.

1 MR. HEPBURN: Yes.

2 CHAIRMAN BURTON: I mean, we've had discussions,
3 and my concern is that we're looking at it, we're thinking about
4 it, we're kind of engaged in it, but not doing it.

5 And I know the bureaucratic stuff, but it ain't
6 brain surgery. "May" to "shall" is not brain surgery. Some of
7 this stuff is not brain surgery.

8 I mean, it's just like having the will to do it,
9 and having the will to do it doesn't mean Charley Manson's going
10 to be walking the streets. It means that there's a fair
11 process.

12 Just like the ADA compliance was as much about
13 fear of process, where, you know, people who can't see aren't
14 given documents to read and saying, "Is this correct?" Or
15 people that talk by sign language aren't manacled. Doesn't mean
16 they would have gotten out if they could sign. It just meant
17 they had a shot.

18 Walk me through the decision review process. Say
19 you have a three-member panel; right?

20 MR. HEPBURN: Yes.

21 CHAIRMAN BURTON: Two Commissioners and a Deputy?

22 MR. HEPBURN: Usually.

23 CHAIRMAN BURTON: For the sake of this, let's say
24 you've got two of them on there.

25 They hear all the evidence, and blah, blah, blah,
26 blah, blah. They set a date.

27 Why should a separate unit be allowed to overturn
28 the decision of that three-member panel?

1 MR. HEPBURN: The unit doesn't overturn the
2 decision.

3 What they do is, they look at the issues and make
4 recommendations to three other Commissioners.

5 CHAIRMAN BURTON: Who weren't there.

6 MR. HEPBURN: Who may or may not have been there.

7 CHAIRMAN BURTON: You said three other.

8 MR. HEPBURN: It could be one of the same -- one
9 of the three could have one that was on the panel, too. That's
10 possible.

11 CHAIRMAN BURTON: I mean, I'm really missing
12 something in this process, unless the preparation for the
13 initial hearing is so slip-shod, and that the Commissioners are
14 so lazy, and that no one's doing the job.

15 MR. HEPBURN: I don't --

16 CHAIRMAN BURTON: Which I don't necessarily
17 believe is the case.

18 Then why do you have somebody over there, you
19 know, second-guess them? What we have is, you have the
20 Commissioners, none of whom that I've met are really like
21 bleeding hearts. And they've decided somebody deserves a date.

22 Then you've got this other group that is there as
23 a stopgap. And then you've got the last stopgap is the
24 Governor.

25 As I said before, and I said this before, when
26 Governor Wilson was there and everything else, it seems to me we
27 could save a hell of a lot of money by abolishing the group,
28 because enough people, you know, people don't get out anyway.

1 But it appears to me, I don't understand, you
2 know, that process, unless we have no faith in what that first
3 group is doing. We have appellate things here, but they're
4 really based on matters of law, not fact.

5 MR. HEPBURN: Well, the process was set up to
6 correct our errors.

7 CHAIRMAN BURTON: What kind of error would it be?

8 MR. HEPBURN: They may miss something in the
9 record that might be significant, that might affect the
10 decision. And I think it's better that we correct the error in
11 advance.

12 CHAIRMAN BURTON: You mean in other words,
13 there's something really significant, and when they got the
14 documents, it wasn't in it? Or they were lazy and didn't read
15 it? Or maybe it came Monday in the morning, and they only had
16 an hour to prepare eight cases?

17 What of great significance would slip by all
18 three of them? Like, there's three of us sitting here, and all
19 of a sudden I say, "Well, I think we ought to set a date." And
20 he says, you know, "How about the fact that this is the 27th
21 murder?" I say, "I missed that page."

22 What is it? It seems to me just another hurdle.
23 Why not just go directly to them? Forget the three-person
24 panel.

25 MR. HEPBURN: I think it's put there so that our
26 decisions are supported by the evidence in the record, and that
27 we're consistent.

28 CHAIRMAN BURTON: What the hell are those three

1 guys doing? They've got evidence and a record. What are they
2 doing?

3 MR. HEPBURN: Most of the time, decision review
4 process approves the decision that they make.

5 But when we're granting dates that affect public
6 safety, we look at them very carefully.

7 CHAIRMAN BURTON: We're back into public safety.

8 Public safety means that when the person's let
9 out, they aren't going to do what got them to the point where
10 they're in; right?

11 MR. HEPBURN: Yes.

12 CHAIRMAN BURTON: And yet, on the Rosenkrantz
13 case, it was the nature of the killing, not the killing itself,
14 that led the board of review to overturn the date. Whether the
15 manner of killing means that he was going to do it to everybody
16 when he walked out, or the fact that he killed him, and he was
17 going to do it to everybody when he walked out.

18 I mean, public safety deals with not what got you
19 there, but basically what you were like inside, what you were
20 like before you did that, and are you likely to do it again.

21 I mean, it just seems kind of bizarre to me that
22 we would say that they missed some evidence of significance.
23 All three of them missed it, which means it wasn't in the
24 document, or they're all stupid.

25 MR. HEPBURN: And sometimes information comes to
26 light after the hearing. We'll get correspondence that gets
27 sent in that should be considered. For some reason or another,
28 it wasn't available to the panel. There may be a police report

1 associated.

2 CHAIRMAN BURTON: Police report for somebody
3 who's been in jail ten years has already been on file. I would
4 assume that's the type of stuff, if you wanted it, would be in
5 the record.

6 It ain't like the police report happened this
7 morning. It happened a long time ago.

8 MR. HEPBURN: But they're not supplied in every
9 case because they're not necessary in every case, because we
10 have appellate decision and things that establish the facts of
11 the case.

12 But if there's a discrepancy between, for
13 instance, what the inmate's version of what occurred and what
14 the appellate decision says, in order to clear up some of those
15 things, sometimes the Board will request some follow-up
16 information, such as a police report.

17 CHAIRMAN BURTON: So, the inmate said, "I hit him
18 with my fist." The appellate court said, "The facts of this
19 case are the following. Defendant Johnson took a knife and
20 slashed the person's throat."

21 What do you need to know, if you've got the
22 appellate court's decision? Those are the facts that are laid
23 out.

24 Or do you think maybe that the police report's
25 going to support the inmate's thing as against the appellate
26 court's thing?

27 MR. HEPBURN: You want to clarify -- you want to
28 know if the inmate is being honest with you, if he's come to

1 terms with what he did. And sometimes you need those reports to
2 clarify that.

3 CHAIRMAN BURTON: How about the one that when the
4 decision review unit overturned a decision last year because
5 there were a lot of inaudible parts of the transcript? That
6 inmate was given a parole date, but the new hearing denied him a
7 date. Do you know why? On what basis?

8 First of all, you've got goofy material. And why
9 would you need the material when you've three live people
10 listening to it?

11 But because the transcript was inaudible -- as
12 sometimes ours is because she can't hear what I say -- but it's
13 inaudible. And then, so, we deny it because we couldn't hear
14 anything; although the three guys there, looking and listening,
15 heard it and said it's all right.

16 Then you have another hearing, and the guy gets
17 stiffed.

18 MR. HEPBURN: We need to have a clear record of
19 the proceeding to support the findings.

20 CHAIRMAN BURTON: No, don't you need to overturn
21 the findings? What the hell do you need the three people for if
22 you're going to do that crap? You have an appellate to overturn
23 them, not to affirm them.

24 You make it really difficult. Really, really,
25 really, really difficult.

26 Senator Lewis.

27 SENATOR LEWIS: Following up on that point, what
28 percentage of cases have been overturned in the last year, or

1 some period of time, by the review process?

2 MR. HEPBURN: In the decision review process.

3 SENATOR LEWIS: Yes.

4 MR. HEPBURN: We've got -- I think the numbers
5 are -- I think there were eight last year that were overturned
6 out of the 21.

7 SENATOR LEWIS: Eight out of twenty-one.

8 MR. HEPBURN: Yeah.

9 SENATOR LEWIS: It seems to me that some kind of
10 a review process is necessary because there sometimes, maybe
11 because the volume of cases, you know, an innocent mistake can
12 be made.

13 But I guess the question I have is, is it
14 possible that there should be some type of cases -- maybe it's
15 the battered wife syndrome cases, crimes of passion where there
16 were no other crimes committed, something like that -- is there
17 something, a review that should be allowed going the opposite
18 direction, where parole is turned down, and this similar review
19 process should look at whether or not that was an appropriate
20 decision?

21 MR. HEPBURN: We do look at them in another
22 fashion. All of the decisions are reviewed for accuracy.

23 Quite frankly, the volume of cases to submit to
24 decision review process, we do 2,000 to 2500 cases a year.
25 We're doing about 66 cases a week right now. We could not put
26 them all through that same process just by sheer numbers.

27 SENATOR LEWIS: Is there any category of cases at
28 all that you think that you'd be open to the notion of having an

1 automatic review if the parole board turned it down?

2 Senator Burton's concerned about, you know, the
3 battered wife syndrome cases, for example.

4 MR. HEPBURN: I'd certainly be open to take a
5 look at that. I hadn't considered that before, but I'd
6 certainly take a look at that, consider doing that.

7 CHAIRMAN BURTON: Senator Hughes.

8 SENATOR HUGHES: Mr. Hepburn, how many
9 Commissioners are presently serving now?

10 MR. HEPBURN: We just had one retire, so we have
11 six.

12 SENATOR HUGHES: You have six, and you have a
13 capacity for how many?

14 MR. HEPBURN: Nine.

15 SENATOR HUGHES: So, you have three vacancies?

16 MR. HEPBURN: Yes.

17 SENATOR HUGHES: How many women do you have on
18 the Commission?

19 MR. HEPBURN: Commissioners, we have one woman.

20 SENATOR HUGHES: And the person that just left
21 was a woman also? That is correct?

22 MR. HEPBURN: No.

23 SENATOR HUGHES: So, you've never had two women
24 on the Board at the same time?

25 MR. HEPBURN: Not -- I've only been here since
26 August of last year. Not in that time frame. I'm not sure
27 prior.

28 SENATOR HUGHES: Do you think that the Governor

1 should appoint another woman?

2 The reason I ask that question is because a lot
3 of the women who are in prison are there because of murdering
4 their mates, and they were battered women.

5 MR. HEPBURN: I think whoever the Governor
6 appoints should be the most qualified person. If that's a
7 woman, that's great.

8 That's his call to make. I don't presume to
9 make --

10 SENATOR HUGHES: You don't advocate for women.

11 MR. HEPBURN: -- advocate that position for him.

12 SENATOR HUGHES: I mean, does a woman make a
13 difference in terms of their point of view?

14 Now, the woman who is presently on the Commission
15 is a police officer, ex-police officer; is that correct?

16 MR. HEPBURN: No.

17 SENATOR HUGHES: No, she is not.

18 Do you think it would help to have a woman who
19 was a police officer, like you were, on the Commission, too?

20 MR. HEPBURN: I think it could. She might be
21 able to provide some insight that maybe one of -- the rest of us
22 may not have.

23 SENATOR HUGHES: And do you think that women have
24 different points of view, even if they weren't of a law
25 enforcement background, even if it were an ex-legislator, even
26 if it were someone from an occupation that has nothing to do
27 with prisons or paroles, would make a significant input into the
28 deliberations?

1 MR. HEPBURN: Yes, I think they do have different
2 view points.

3 CHAIRMAN BURTON: As long as she's qualified.

4 SENATOR HUGHES: Oh, she will be probably overly
5 qualified if she gets to that point to be appointed.

6 Do you think it would help you in your capacity
7 in terms of making decisions and having people who are
8 dedicated? I mean, it's a voluminous job that you have. It
9 must be mind-boggling.

10 And sometimes, someone from a little different
11 background brings a little different perspective.

12 How do you feel about all of these women in the
13 prisons that Mr. Burton went to, and they're going nowhere
14 fast?

15 MR. HEPBURN: Well, I'm concerned about the
16 issue. We've committed considerable resources in our
17 Investigations Division, and our Chief of Investigations is a
18 woman who's very concerned about those issues. And she has a
19 total commitment to these issues, and has, going back a number
20 of years.

21 SENATOR HUGHES: Do you have a commitment to
22 these issues?

23 MR. HEPBURN: I do, and she knows that.

24 SENATOR HUGHES: When you look at reconsideration
25 or consideration of an inmate's suitability for parole, what is
26 your criteria? What's the highest priority that you look to for
27 the things that this person has done while they've been
28 incarcerated to make them eligible?

1 And this is gender free. I'm not talking about
2 what the woman has done, or what the man has done.

3 What would be the accomplishment of the prisoner
4 that would impress you the most?

5 MR. HEPBURN: The one thing that impresses me the
6 most, I guess, as far as institutional behavior goes is
7 disciplinary-free behavior throughout their incarceration. And
8 it's not that often that you see that. It's a difficult place
9 to stay out of trouble.

10 SENATOR HUGHES: Stay out of trouble, but it's
11 not just staying out of the trouble.

12 Don't some of the inmates accomplish something
13 else there, not just staying out of trouble, but being a good
14 inmate?

15 What do you think it takes to judge a person as
16 being a good inmate? Someone that keeps their mouth shut? Or
17 someone that never gets into trouble?

18 Or, there any other things that an inmate could
19 do to earn some brownie points in your estimation?

20 MR. HEPBURN: There are a lot of things.

21 You asked me initially to identify the one, the
22 main thing, which I identified.

23 SENATOR HUGHES: Yes, stay out of trouble was the
24 main thing.

25 MR. HEPBURN: There are a whole range of things
26 that they can do to improve themselves while they're in the
27 institution, including educational opportunities, vocational
28 opportunities. A number of programs, counseling programs.

1 Down at CIW, one of the women's institutions,
2 they have a tremendous number of programs that many of them take
3 advantage of and participate in. And you see the significant
4 change in them from the time they came in the institution until
5 15-20 years later, when you may be conducting a parole hearing.

6 SENATOR HUGHES: I'm not just talking about women
7 now. I'm just talking about prisoners in general.

8 You mentioned education, so that could be a male
9 or female who pursued making themselves more qualified to be
10 more productive citizens should they be granted parole; right?

11 MR. HEPBURN: Yes.

12 SENATOR HUGHES: What else?

13 MR. HEPBURN: All those things that I listed.
14 They work, have an opportunity to work in the institution. Are
15 they working? Are they staying disciplinary free? Have they
16 developed a vocation? Have they availed themselves an
17 opportunity for different counseling programs, and things of
18 that nature?

19 Are they doing positive things? Some of them get
20 involved in assisting other inmates and that sort of thing. And
21 they get involved in programs with -- juvenile programs that
22 sometimes will bring them into the institution, and they'll
23 counsel the juveniles.

24 There's a lot of positive things that they can
25 do.

26 SENATOR HUGHES: Thank you.

27 CHAIRMAN BURTON: Senator Knight.

28 SENATOR KNIGHT: One question.

1 During the parole hearings, sometimes or maybe
2 all the time, the victim's family is required to come in, or
3 asked, or invited to come in and testify.

4 Is that the normal procedure?

5 MR. HEPBURN: Yeah, they are notified, if they
6 ask to be, of any upcoming hearing. It's required by the Penal
7 Code.

8 SENATOR KNIGHT: How important is that in your
9 evaluation of the inmate's ability to be paroled?

10 MR. HEPBURN: It is important to get the input,
11 and see how, if it was a surviving victim in the case of
12 something like a kidnapping or a next-of-kin situation. It
13 reminds the Commissioners of the personal impact of the crime
14 that the inmate committed.

15 SENATOR KNIGHT: You mean you have to be reminded
16 by those individuals?

17 Because it's a traumatic experience, every year
18 or two years, when the parole comes up, and those victims have
19 to come in and relive that once again, and try and make sure
20 that that individual is not paroled.

21 MR. HEPBURN: It is. And I see that. I've
22 certainly experienced that emotional impact.

23 SENATOR KNIGHT: Is it necessary? It may be
24 directed, but I'm asking you, do you think it's necessary?

25 MR. HEPBURN: I don't know if it's necessary as
26 much as I think it enhances the process. I think it's good to
27 give them the opportunity to do that. I think it has somewhat
28 of a cathartic effect for the family. And I think it's good for

1 inmate in a lot of cases to hear what the impact was of their
2 actions.

3 CHAIRMAN BURTON: What you say is true. It was
4 the victims groups that fought to put that law on the books, so
5 it's kind of a double-headed --

6 SENATOR KNIGHT: I know, but if you deal with
7 these people, and they request a letter every two years or every
8 year, whenever the parole comes up, and they have to go through
9 this all the time, I don't know, it just appears to me that it
10 shouldn't be required.

11 CHAIRMAN BURTON: It's not required.

12 SENATOR KNIGHT: I know it's not required. But
13 those people, given the opportunity, feel obligated then to go
14 and testify.

15 CHAIRMAN BURTON: So, if everything pointing to
16 the individual being set a date, then, of course, by and large,
17 I think it's a very distinct minority of the victims or victims'
18 families that would show up to support a date. I mean, there
19 are some that have done that, even in the case of capital
20 offenses.

21 Should that or would that, like, just outweigh
22 everything else? By and large, I would think that most, as
23 Senator Knight said, the victims groups would go through the
24 trauma of coming. Basically, they're saying, "Let the person
25 stay in."

26 MR. HEPBURN: It does have an impact on your
27 decision, sure.

28 CHAIRMAN BURTON: Should it?

1 MR. HEPBURN: I think it should. I think we need
2 to know.

3 CHAIRMAN BURTON: Can't you almost assume that,
4 by and large, greatly by and large, that the victims, or the
5 families of the victims are going to basically not be for
6 letting somebody out, no matter what?

7 MR. HEPBURN: In most cases, that's true. I've
8 actually had some coming in --

9 CHAIRMAN BURTON: There have been a few, but I
10 think it's just human nature is going to say, you know, whatever
11 happened, happened, and keep the person in.

12 I think that may be part of the most mosaic, but
13 whether or not it should override, I don't really know.

14 Are they doing something to get a better either
15 taping session, transcription system, or something, so that
16 people don't have their dates shut off because of a mechanical
17 flaw?

18 MR. HEPBURN: Yes, we're testing three new sound
19 systems right now. I haven't gotten feedback yet on the
20 transcripts from those hearings, but we've got something that
21 we're going to propose in the near future.

22 CHAIRMAN BURTON: What are you going to do on
23 reimbursement rates for attorneys?

24 MR. HEPBURN: We supported a higher rate in the
25 Governor's budget last year. I believe it got pared down a
26 little bit by the LAO. And I'm sure there wouldn't be any
27 objection by the administration to support that higher rate next
28 time around.

1 CHAIRMAN BURTON: What about the travel stuff,
2 like if they've got to go up to Susanville, or places way out?

3 MR. HEPBURN: We look at those on a case-by-case
4 basis to approve travel time for attorney.

5 Usually when they go someplace remote like
6 Susanville, they're there for the full week. So, they travel
7 once, but they do 22 hearings when they're up there. But we do
8 allow them some time.

9 CHAIRMAN BURTON: Then we had the discussion
10 about the inmate's ability to respond to or correct the victim's
11 statements, similar to what they do in the Youth Authority,
12 where basically the victim or the victim's family will leave the
13 room, and then they would have a chance to comment on that?

14 MR. HEPBURN: Yeah. I've looked at that issue
15 and had our legal division do some research into how that's done
16 in criminal trials.

17 As we've already discussed, it is an emotional,
18 traumatic experience for the families to be in there and have to
19 make those statements in most cases.

20 What they do in criminal trials is -- and the
21 reason for the victim to be there, really, is not to talk about
22 the facts of the case. It's just to talk about the impact on
23 the next of kin and the surviving members. And that's what the
24 Commissioners are listening for.

25 And when a victim goes to a criminal trial and
26 makes a statement, an impact statement, if they inadvertently
27 say something, or intentionally say something that's in conflict
28 with what's in the record, the facts of the case, the judge

1 makes a comment on the record that, "That information isn't
2 before me, and I won't be considering that information."

3 And what I would like to do is instruct our
4 Commissioners to make a similar comment.

5 CHAIRMAN BURTON: What's wrong with doing what
6 the CYA does?

7 MR. HEPBURN: I'm not sure. I don't have an
8 answer yet on the legal issue there.

9 CHAIRMAN BURTON: What the hell's the legal
10 issue? They're doing it. You can do it.

11 MR. HEPBURN: The Penal Code gives them the right
12 to be there, and I don't know that we can exclude them through
13 part of the hearing.

14 CHAIRMAN BURTON: Well, I think they're allowed
15 to be at Youth things. I believe that they're allowed to come
16 to make their statements. I don't know if they're required to
17 be there for the whole length of it or not.

18 All you have to do is read the statute. That
19 will kind of tell you something. Did you ever read the statute?

20 MR. HEPBURN: I talked to people from YOPB about
21 their procedure.

22 CHAIRMAN BURTON: Did you ever read the statute
23 that we're talking about?

24 MR. HEPBURN: For YOPB or for us?

25 CHAIRMAN BURTON: No. A concern is, or a reason
26 for not doing something, is that the statute, I think, requires
27 that the victims be informed, thereby allowing them to be
28 present to testify or to comment. That that may then be a legal

1 impediment to saying, although I guess the victims could get the
2 option.

3 Let's assume that there's no way in the world
4 that you could ask them to be excused to spare them the
5 situation, that we would want to spare them.

6 But I guess then also, the option could be given
7 whether they do want to sit there, or whether they would not
8 want to be present while this person's saying the thing, I
9 guess, a clear reading of the statute.

10 It is a little bit different when a judge says
11 that's not before me, than when basically one of the hearing
12 things. And I think that it's something that clearly ought to
13 be looked at.

14 I think one of the grave concerns that I've had
15 is that it seems slower than molasses in January to get any
16 movement from you as the Chair, and even movement saying, "No,
17 we aren't going to do that. We don't like it," you know, take
18 your best shot.

19 We just get, "Well, yeah, that's something, and
20 we're working on it, and we're thinking about it, and we're
21 trying this, and we're talking to this guy."

22 I mean, again, we're trying to make this process
23 at least a fair process. And if everybody's a bad person,
24 everybody's done terrible things, and everybody's a bad risk,
25 and everybody's been written up 15 times, they're probably not
26 going to get out. But they ought to have a shot at sitting
27 there so you can look at his record and say, "Are you kidding
28 me? Would you let yourself out if you had this?"

1 So, I really want to get an answer back on that.

2 There is a problem, a time problem. And the only
3 reason we're having this hearing today is, there is time problem
4 with your appointment that dies today. There are two others
5 that well could be gone by the end of December.

6 And you have the ability, between now and that
7 hearing, to do something or not.

8 And as for me, as they used to say in Germany,
9 it's mox nix. It doesn't really matter.

10 But I think it should matter to you, and it
11 should matter to your two Commissioners that are out there, that
12 are out there waiting.

13 One of the reasons that I felt it was important
14 to have this hearing is that the Secretary has convinced me
15 that, for the Board to move forward in certain ways, that you're
16 important to that process, given our interchanges. Sometime I'd
17 like to sit down and debate that with him.

18 But on the basis of that is the only reason that
19 we're having this.

20 If there's no questions from Members of the
21 Committee, do you have family here that you'd like to introduce?

22 MR. HEPBURN: Sure. I'd like to introduce my
23 girlfriend, Midori Robles.

24 CHAIRMAN BURTON: It's nothing personal; just
25 business.

26 Okay, witnesses in support briefly, please.

27 MR. YARYAN: Tim Yaryan, representing the Los
28 Angeles Police Protective League, the Association for Los

1 Angeles Deputy Sheriffs, Riverside Sheriffs Association.

2 I talked with Ted Hunt this morning, the current
3 President of the League. Dave was his predecessor. He would
4 like to be here; he's in Washington, D.C., but he basically
5 asked the Committee to consider that Dave was President of the
6 Protective League for a reason. He was considered by his peers
7 to be fair, impartial, objective and thoughtful in his decision
8 making process.

9 CHAIRMAN BURTON: You mean he wasn't representing
10 them aggressively before the City Council and the Chief?

11 MR. YARYAN: I think that's being fair and
12 thoughtful and objective.

13 [Laughter.]

14 MR. YARYAN: And he was unanimously elected by
15 his peers. And I think he carries those same qualities over to
16 the Board, and we urge his confirmation.

17 CHAIRMAN BURTON: Other witnesses? Any witnesses
18 in opposition?

19 MS. MCGILL: Commissioner, Members, my name is
20 Nancy McGill. I obviously oppose the appointment.

21 Penal Code 5075 indicates that we should have a
22 Board that is a cross-section of society, and currently we have
23 a Board that is primarily of backgrounds of law enforcement or
24 an affiliation of that.

25 I also have a problem with the tremendous amount
26 of contradictions that I hear here in regards to what the Board
27 should be doing and what is actually happening.

28 We have 19,000 lifers; 19 were approved by the

1 Board in '99, I believe. That's less than one percent.

2 I know for a fact that -- and inmates have been
3 completely totally disciplinary-free for a period of 15 years.
4 They have job offers in their files for \$50,000 a year. They
5 have done self-help programs. And they have a positive
6 psychological report.

7 They have been denied parole because they have
8 been told that they have not job skilled trained. They do not
9 have enough adequate psychological help, but yet the Board does
10 not give any direction or guidelines as to what is expected of
11 them. They just don't have adequate self-help programs.

12 The inmates are sometimes told that because they
13 have a stable social history, both in prison and in the life
14 prior to their incarceration, that they cannot determine the
15 predictability of the inmate. Therefore, they have to deny
16 parole.

17 I don't feel that the matrix is being followed.
18 And when the inmate is reviewed, it is primarily the list of
19 unsuitability factors, versus any of the suitability factors. I
20 personally know of an inmate who reaches and goes over and above
21 and beyond the suitability factors, and those are never
22 discussed in the hearing.

23 There is frequently maybe one sentence that says
24 something positive about the inmate, and other than that,
25 nothing else is said.

26 I think we are wasting our tax dollars supporting
27 this Board, and especially one that doesn't meet Penal Code
28 5075.

1 I also feel that the Board, basically it's a
2 blanket denial of the inmate. They recess for approximately
3 five minutes. They enter a room that has no computer, no
4 typewriter, and they reappear with the denial. There is no way
5 that they could reappear with a five-minute recess and have an
6 entire typed report saying the inmate is denied.

7 The inmate is cut off when he is trying to answer
8 a question. I don't think it's a fair hearing. And I don't see
9 how that a Board that is of primarily law enforcement background
10 or affiliation can give a fair hearing.

11 CHAIRMAN BURTON: Can you comment on that? In
12 other words, it's your opinion that they might be already
13 walking in there with the typed out decision?

14 MS. MCGILL: Absolutely, no question in my mind
15 about that.

16 CHAIRMAN BURTON: Can you comment on that?

17 MR. HEPBURN: I'd be happy to.

18 There are -- we have two forms. One for parole
19 denied, and one for parole granted. It's a format that's
20 pre-printed, but you write in the specifics for each case on the
21 form. So, it doesn't take you a lot of time to fill it in.

22 I don't think it's very often that you have a
23 five-minute deliberation. That's just not been my experience.

24 CHAIRMAN BURTON: Can't the inmate discuss his
25 suitability things?

26 MS. MCGILL: The inmate can try to, but he's
27 frequently cut off when he is attempting to respond.

28 CHAIRMAN BURTON: What do you say about that?

1 MR. HEPBURN: It hasn't been my practice, and it
2 hasn't been my experience with the Commissioners I've worked
3 with.

4 CHAIRMAN BURTON: Do you look at the suitability
5 factors?

6 MR. HEPBURN: Yes.

7 CHAIRMAN BURTON: The inmate can basically sit
8 there, because I imagine, why do you think you're suitable, or
9 whatever. And they go: A, B, C, D, E, F, and G.

10 I imagine that some of those things are on tape,
11 but I can't conceive of them basically cutting somebody off,
12 unless they're rattling on for like 20 minutes and being
13 redundant.

14 MS. MCGILL: The second sentence in response to a
15 question, they will cut off. And the transcripts indicate that
16 none of the issues for suitability are discussed. In other
17 words, there are eight points of suitability. And in the
18 hearing, primarily it's the unsuitability factors that are
19 discussed.

20 And if you have an inmate that can earn \$50,000 a
21 year with a job offer in his file, he has 115s, no disciplinary
22 action. He has a place to stay. He meets all the suitability
23 factors, and is still denied parole, and denied parole because
24 he is told he is not job-skill trained.

25 CHAIRMAN BURTON: If you could get us that
26 information, we'll get it to them. I'd like to have an
27 answer.

28 MS. MCGILL: What would you like?

1 CHAIRMAN BURTON: I guess what you're talking
2 about.

3 MS. MCGILL: You want the transcript? Do you
4 want -- of the hearing?

5 CHAIRMAN BURTON: I would like to afterwards,
6 maybe you can get together with Nettie Sabelhaus and go over
7 that.

8 I mean, if a guy's got a job offer, 50 grand, and
9 he's not job suitable, there's something wrong somewhere.

10 MS. MCGILL: And I find that to be true. And
11 especially, he was denied parole because they said that the
12 psych report was invalid. He had a positive psych report that
13 said that he had no psychological problems.

14 And then, why would he be told that, because he
15 had a stable social history, his risk on the outside couldn't be
16 determined? I mean, does he need to have a negative social
17 history in order to prove that he is now good?

18 CHAIRMAN BURTON: You can get it afterwards,
19 Ma'am.

20 MS. MCGILL: Yes, thank you.

21 MS. TAYLOR: Good morning, Mr. Chair, other
22 Senators. I'm Wendy Taylor, and I'm here for the California
23 Attorneys for Criminal Justice.

24 Rowan Kline, who represented Robert Rosenkrantz
25 in his parole hearing, wanted to be here, but unfortunately,
26 he's out of the country. So he has asked me to relay some
27 information to you.

28 Two years ago, Senator Polanco held a joint

1 hearing, and former Chairman Nielsen participated in those
2 hearings. And he agreed to improve the process regarding lifer
3 hearings.

4 Mr. Hepburn to date has given no indication that
5 he's even willing to discuss the improvements that were
6 discussed in that joint hearing.

7 The Rosenkrantz decision, which ordered a parole
8 date, is now final. In that decision, it requires important
9 changes in Board regulations and policy. Mr. Kline and Donald
10 Spector, who is of the Prison Law Office, have suggested changes
11 through Senator Burton's office, and so far have been
12 unsuccessful.

13 Mr. Kline has also offered procedural proposals
14 to improve the system without any indication from this Board or
15 this Chairman that they would even discuss those proposals.

16 Mr. Kline says that Ms. Sabelhaus has all the
17 correspondence that has been going back and forth.

18 And for those reasons, CACJ and Mr. Kline
19 personally oppose the confirmation of Mr. Hepburn.

20 CHAIRMAN BURTON: Other witnesses.

21 MS. GUILLEN: Good afternoon, Senators, and men
22 and women in the audience.

23 My name is Kathleen Guillen, and I am --
24 actually, I'm here -- I'm the wife of a person who has served a
25 seven to life sentence, and he is now in his 28th year of
26 incarceration.

27 I hesitate to give my name solely on the fact
28 that my experience has been that retaliation is something that

1 is prevalent among in Commissioners that I've experienced. And
2 I have great concern in that my husband will be reviewed within
3 the next two weeks.

4 However, with that in mind, I think it's critical
5 and crucial that somebody stand up and put a face to the names
6 and the numbers of people who come before the Board.

7 I've prepared many different questions.
8 Although, after listening, have come up with several more. I'll
9 try to be brief and succinct.

10 Something that is just appalling to me that
11 continues to run through my mind is, in Mr. Hepburn's response
12 to the question of, what is his primary issue of concern,
13 stating specifically that a person is disciplinary free in his
14 history of incarceration.

15 My question is specifically, in terms of the word
16 or the concept of redemption and forgiveness, what I'd like to
17 know is, in Mr. Hepburn's view, when has a murderer achieved
18 enough, quote-unquote, brownie points to be found suitable, and
19 is redemption possible in your opinion?

20 That's something that is certainly a paramount
21 issue among the Board members historically. I'd like to hear an
22 answer to that, if at all possible.

23 Secondly, I'd like to know, what would you do to
24 change the composition of the Board, in that being the Chairman
25 is significantly a power position?

26 And with that in mind, along with the previous
27 discussion of Penal Code 5075, it states clearly by law that the
28 Board is required to represent a cross-section of society

1 demographically, socio-economically, gender, educators, public
2 health providers.

3 CHAIRMAN BURTON: Only the Governor can do that,
4 Ma'am.

5 MS. GUILLEN: Thank you.

6 I'm very -- I have a lot of information. I'll be
7 a little more concise.

8 But clearly, we all know here in this room what
9 Penal Code 5075 states. And I'd like to know how, indeed, can
10 one have a Board that is fair and impartial without adhering to
11 that law.

12 Another statement that is blatantly ignored and
13 incorrect is, the comment that -- I believe Senator Lewis had
14 asked something, and phrased it in terms of something to the
15 effect of early release. Meaning that nobody is -- nobody comes
16 before the Board in an early release situation.

17 And to correct that, certainly that is not the
18 case with my situation, nor is it the case with hundreds of
19 people that I know of.

20 As of last year, I attended the January 29th, the
21 Prison Construction Meeting in 1999, and as of that time, I'm
22 under the impression that 513 lifers who have done over 20 years
23 in the State of California are still incarcerated. And those
24 are people who've done them above and beyond the time that they
25 were required to do.

26 I contest that the matrix is nonexistent. It is
27 a format. It is a figure that is calculated and is strictly on
28 paper.

1 There's so much.

2 The other question I have, given that the
3 Governor has made his beliefs regarding no parole for convicted
4 murderers very clear, I'd like to know what, indeed, will
5 Mr. Hepburn do should he come before the decision of going
6 against one of his two bosses, his other boss, of course, being
7 the Chair of this particular Committee?

8 I'd also like to pose the question and have other
9 Senators who are here look into this, and if you want more
10 information about this movement, I will certainly provide it for
11 you, but I'd like to know if the Commissioner even knows what
12 the definition of the words "restorative justice" means. And
13 in your opinion, is restorative justice a viable and valuable
14 alternative to incarceration?

15 I'm appalled at the comment that the Board
16 arrives and reviews the inmate's file for approximately an hour,
17 and at the extent, perhaps four to five days prior.

18 To reiterate Senator Burton's response or comment
19 or outrage, how can you fully review an inmate's C-file, and
20 when you have somebody like my husband, who has 20 years of
21 solid education, and programming, and outstanding behavior, how
22 could you possibly look at a file that was many inches, if not
23 many files itself, within an hour, and clearly, with good
24 conscience, state that you have that human being's life and
25 freedom in your best interest? That's just absolutely appalling
26 to me.

27 Lastly, and I will just say briefly, with this
28 particular situation, of course, I have an agenda, but I also

1 have friends, and loved ones, and family that I have met
2 throughout my experience with the California Department of
3 Corrections.

4 I was of service to the California Department of
5 Corrections and other institutions for twelve years, bringing
6 service and groups into juvenile halls, CYA, halfway houses, et
7 cetera, twelve years prior to my becoming involved with my
8 husband.

9 My question is this. For a person who has come
10 from a fifth grade education to now have -- be an internship shy
11 of a Master's in psychology, has a triple Bachelor's in
12 behavioral science, who has laudatory, copious laudatory chronos
13 that state that he has been an active and involved participant
14 consistently for 18 years in Alcoholics Anonymous and Narcotics
15 Anonymous, who is a spiritual elder in his community, and who
16 has -- actually was one of the founders of the ROCK Program,
17 which was designed for -- it specifies the acronym is Reaching
18 Out Convicts and Kids, and this is an award-winning program that
19 has been in effect for many years.

20 How is it that you can say that that individual
21 is lacking in educational skills? Is lacking in job offers? Is
22 lacking in community support?

23 I put that to the Board and to the Commissioners
24 and the Senators in front of me, and I ask that you strongly
25 consider what I've mentioned.

26 Thank you.

27 CHAIRMAN BURTON: Would you like to comment?

28 MR. HEPBURN: No, I have no comment.

1 CHAIRMAN BURTON: Are you familiar with the case
2 she's talking about?

3 MR. HEPBURN: No, I'm not.

4 CHAIRMAN BURTON: Do you want to get familiar out
5 of curiosity?

6 MR. HEPBURN: I am curious about the facts, and
7 apparently it's pending in a couple of weeks. I could very well
8 be on that panel.

9 MS. GUILLEN: This is correct. Part of my
10 concern about mentioning my name.

11 CHAIRMAN BURTON: That's all right. If he really
12 was that type of person, he could probably try to figure it out.
13 At least you've now alerted him and alerted us to the facts in
14 this. He's alert to some facts, and there you have it.

15 What's the pleasure of the Committee.

16 SENATOR LEWIS: Move it.

17 CHAIRMAN BURTON: Moved by Senator Lewis. Call
18 the roll.

19 SECRETARY WEBB: Senator Hughes.

20 SENATOR HUGHES: Aye.

21 SECRETARY WEBB: Hughes Aye. Senator Knight.

22 SENATOR KNIGHT: Aye.

23 SECRETARY WEBB: Knight Aye. Senator O'Connell.

24 SENATOR O'CONNELL: Aye.

25 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

26 SENATOR LEWIS: Aye.

27 SECRETARY WEBB: Lewis Aye. Senator Burton.

28 CHAIRMAN BURTON: No.

1 SECRETARY WEBB: Burton No. Four to one.

2 CHAIRMAN BURTON: Inspector General for the
3 Veterans Affairs.

4 Welcome.

5 MR. HANSEN: Senator Burton, Senators, Members,
6 ladies and gentlemen, I'm Jerry Hansen, here today seeking
7 confirmation as Inspector General for Veterans Affairs.

8 My background includes over 30 years of military
9 service. I retired from the Army in 1997 as a Colonel. My
10 military service includes troop assignments in the U.S.,
11 Vietnam, and Germany; staff assignments at the Pentagon.

12 My last five years of active service were spent
13 as the Inspector General for the California Military Department,
14 following attendance at the Army's Inspector General Course.

15 Retiring in '97, I began working for the state as
16 one of the first Deputy Inspectors General with the Youth and
17 Adult Correctional Agency, where I wrote policies and
18 procedures, conducted investigations, and ran the new program of
19 management review audits for wardens and superintendents.

20 After the Legislature and the Governor created
21 the position of Inspector General for Veterans Affairs, I moved
22 into that position in January of this year. My charter includes
23 reviewing the operations and financial conditions of the State
24 Veterans Homes, the Cal-Vet Loan Program, and other programs
25 supported by the state, other veterans programs.

26 I was also asked to co-chair the newly created
27 Governor's Blue Ribbon Task Force on Veterans Homes.

28 Operationally, I support the Secretary of

1 Veterans Affairs, and I receive guidance from the Governor's
2 Office.

3 The first priority for my time has been the
4 Veterans Homes, especially Barstow, and especially quality of
5 care issues. Since January, I've made 13 trips to Barstow.
6 I've observed two Department of Health Services surveys, and the
7 annual U.S. Department of Veterans Affairs inspection.

8 In May, I participated with DHS in investigations
9 at the Home involving complaints of misconduct surrounding the
10 deaths of several residents. Since those investigations
11 continue, I will not be able to address the specific outcomes at
12 this time.

13 My charter includes providing on going advice and
14 assistance to the California Veterans Board, which meets
15 monthly -- I have attended four of their meetings -- as well as
16 participating in numerous off-line discussions of issues.

17 CHAIRMAN BURTON: What's your budget?

18 MR. HANSEN: My budget with the new Governor's
19 budget is \$605,000.

20 CHAIRMAN BURTON: Do you know how many people are
21 there?

22 MR. HANSEN: That would be three staff members
23 and a temporary health blanket for retired annuitants of
24 90,000.

25 CHAIRMAN BURTON: Is that enough to do what you
26 have to do?

27 MR. HANSEN: I don't believe that it is, but I do
28 believe that I'll be able to document workload this year so that

1 in the new budget submission, I'll be able to request what's a
2 reasonable figure.

3 CHAIRMAN BURTON: Didn't some more people die up
4 in Barstow recently?

5 MR. HANSEN: There was another recent citation.

6 CHAIRMAN BURTON: Death. Somebody died. Let's
7 call it a death, not a citation. Citation's a horse.

8 How many people died? Somebody said like two or
9 three just recently.

10 Do you know, Pete?

11 SENATOR KNIGHT: Not recently. I think there's
12 only with three at the most.

13 CHAIRMAN BURTON: Total? What's the most recent
14 death that you know of.

15 MR. HANSEN: In May.

16 CHAIRMAN BURTON: In other words, there hasn't
17 been one since the last one.

18 SENATOR KNIGHT: Not that I know of.

19 CHAIRMAN BURTON: Bad information I'm getting.

20 Tell me, there were concerns made during the late
21 lamented hearings of the person who didn't quite make it as
22 Director about the Cal-Vet program, and the fact that there were
23 a lot of people that might end up losing -- which was it? The
24 life insurance program?

25 Are you familiar with that problem?

26 MR. HANSEN: I'm familiar with the problem, yes,
27 Senator.

28 CHAIRMAN BURTON: Are you looking at it? You got

1 recommendations?

2 MR. HANSEN: Yes, I've attended some hearings.
3 I'm not at the point where I'm ready to make a recommendation
4 yet. It's a pretty complex problem, and I'm not sure I have the
5 solution yet.

6 CHAIRMAN BURTON: Well, I mean, tempest fugit on
7 that one, because there's some people who will end up losing
8 their life insurance, or end up seeing a great stubble. You
9 can't kind of shilly-shally with recommendations on that.

10 MR. HANSEN: I agree. It's something that has
11 had, quite frankly, a second priority to the Veterans Homes, and
12 some of the deaths that we've discussed.

13 CHAIRMAN BURTON: Well, we're aware of the
14 problems there. Everybody's aware of that.

15 And, I mean, the Governor's solution, which may
16 not be a bad one, and I don't know if he shared this with you,
17 Senator Knight, but to change Barstow to a more domiciliary
18 situation, and make Chula Vista, or some other Veterans Home --
19 because they're having trouble getting competent doctors and
20 staff down there for some reason. The 120 degree heat is not
21 made up for by the \$70,000 salaries.

22 So, one of the things that the Governor has at
23 least discussed with me or mentioned to me was changing the
24 nature of that, and then moving the hospital-type care to areas
25 that'd be easier to get full staffing.

26 I would hope you would put somebody immediately
27 on that life insurance thing because that's like, you know,
28 happening. They're all happening immediately, but that's one

1 that really we have to deal with, I think, even quicker in a way
2 than the Veterans Homes. Because the Veterans Homes, they're
3 ongoing and long, but this is one, the problem's going to be
4 there.

5 Senator Lewis.

6 SENATOR LEWIS: Without going into detail,
7 because I know that would be inappropriate, can you just tell me
8 at this point in time, are you investigating any allegations of
9 misconduct against the former Secretary Alvarado?

10 MR. HANSEN: I am investigating a number of
11 issues, including personnel issues. Those could reflect further
12 on against the former Secretary, but none with him specifically
13 as the subject.

14 SENATOR LEWIS: My second question dealt with
15 personnel issues. You answered that as well.

16 Thank you.

17 CHAIRMAN BURTON: So, it'd be improper to answer
18 as to him, or you're not looking at him?

19 MR. HANSEN: It would be premature to answer as
20 to him, Senator. We're looking at everything right now.

21 CHAIRMAN BURTON: It may or may not include him?

22 MR. HANSEN: We're going to look at everything,
23 senator. If it includes him, we'll go that far.

24 CHAIRMAN BURTON: Where were you stationed in
25 Germany?

26 MR. HANSEN: In Neu Ulm, which is on the Danube
27 River.

28 CHAIRMAN BURTON: Colonel Knight.

1 SENATOR KNIGHT: The allegations and
2 investigations that have been going on at Barstow, can you give
3 me kind of a status of are they coming to fruition?

4 In looking at some of the citations, most of them
5 were administrative, or a lot of them were administrative. And,
6 of course, they're going to take a plan by the Director at the
7 Home, in order to implement a plan.

8 Is that coming along? Everytime I turn around,
9 there's a new group going to Barstow, and we've got a new
10 administrator there, and I'd like him to be able to formulate
11 his plans, get settled down, and correct the discrepancies, and
12 get on with it, as opposed to entertaining investigators day-in
13 and day-out.

14 MR. HANSEN: That's a valid concern, Senator. I
15 believe we've made a lot of progress in that area. I don't
16 think we've completely resolved all the issues.

17 We're still looking for a full-time permanent
18 Director of Nursing, which is certainly a key position in any
19 skilled nursing facility, and we're still going through the
20 process also to bring a licensed administrator specifically for
21 the skilled nursing facility who would work for the overall Home
22 administrator.

23 With those two key positions filled, I believe
24 that we would have the majority of the problems that have been
25 identified and addressed in subsequent investigations and
26 surveys resolved as far as the infrastructure is concerned.

27 They've made a lot of progress in policies and
28 procedures, and we're bringing on more staff now with the

1 Governor's budget. So, I'm not prepared to say that it's all
2 behind us.

3 We still have a few challenges ahead, but I think
4 we've made a significant amount of progress. And that if we can
5 fill those two key positions soon, then I think -- along with
6 possibly downsizing the size of the skilled nursing facility,
7 we're also looking at that, 180-bed nursing facility in a remote
8 location is a very difficult challenge.

9 And I think if we could bring that down to a more
10 reasonable size, that that would also make maintenance of
11 standards much more achievable.

12 SENATOR KNIGHT: Now that Chula Vista is open, it
13 is almost at the back door of a hospital. Would that be an
14 appropriate place to move the nursing care, and make Barstow
15 more domicilial?

16 MR. HANSEN: Certainly, that would be an
17 appropriate place, and that's being considered. There is some
18 linkage between the certification of the skilled nursing
19 facility at Barstow and any other homes operated by the
20 Department of Veterans Affairs.

21 SENATOR KNIGHT: What do you mean?

22 MR. HANSEN: Well, typically if DHS withdraws
23 certification as the agent for health care financing
24 administration from one home, they also look at the licensee
25 overall in all their other homes.

26 SENATOR KNIGHT: Are you suggesting that you pull
27 all of the nursing care facilities out of Barstow? Is that what
28 you're looking at?

1 MR. HANSEN: I would say that we're really
2 looking at everything, although that would certainly not be my
3 preferred option.

4 SENATOR KNIGHT: But that's what you were just
5 suggesting, I think; wasn't it? You said there was going to be
6 a de-licensing.

7 MR. HANSEN: No. There's currently been a
8 de-certification by health care financing.

9 SENATOR KNIGHT: That's because of the
10 investigations; right?

11 MR. HANSEN: Correct.

12 SENATOR KNIGHT: And once the investigations are
13 complete, or there is a plan to correct, that should be lifted;
14 shouldn't it? Or reinstated?

15 MR. HANSEN: I would hope so.

16 CHAIRMAN BURTON: The concern, and I think this
17 would really be more, in many ways, coming from the Governor,
18 you may want, at some time, talk with him.

19 As I said, the main concern that he had down
20 there, I don't know at what level between like domiciliary care
21 versus skilled nursing home, but they're just having real
22 trouble getting top qualified people to be there. And he's
23 trying to figure out what to do.

24 I think that if you have any ideas, he'd probably
25 be happy to have the input, because I think he's searching
26 around. But I think that's really going to be a decision that
27 he's going to make more than anyone else. If you've got some
28 ideas, I'm sure he'd be happy, because he's sort of thrashing

1 around, looking for them.

2 SENATOR KNIGHT: Okay.

3 CHAIRMAN BURTON: Do you have any family here,
4 sir?

5 MR. HANSEN: Well, I would just --

6 CHAIRMAN BURTON: Do you have any family here,
7 sir?

8 MR. HANSEN: Yes, my wife, Anna, and my veterans
9 and Army family as well.

10 CHAIRMAN BURTON: There you go. So, you think
11 he's all right, do you?

12 FROM THE AUDIENCE: Yes, sir.

13 CHAIRMAN BURTON: What's he got on you?

14 [Laughter.]

15 FROM THE AUDIENCE: He doesn't have anything on
16 me. I'm commander of my post.

17 CHAIRMAN BURTON: Okay, sir.

18 Any witnesses in opposition? Hearing none, moved
19 by Colonel Knight, Colonel to Colonel.

20 Call the roll.

21 SECRETARY WEBB: Senator Hughes.

22 SENATOR HUGHES: Aye.

23 SECRETARY WEBB: Hughes Aye. Senator Knight.

24 SENATOR KNIGHT: Aye.

25 SECRETARY WEBB: Knight Aye. Senator O'Connell.

26 SENATOR O'CONNELL: Aye.

27 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

28 SENATOR LEWIS: Aye.

1 SECRETARY WEBB: Lewis Aye. Senator Burton.

2 CHAIRMAN BURTON: Aye.

3 SECRETARY WEBB: Burton Aye. Five to zero.

4 CHAIRMAN BURTON: Congratulations, sir.

5 MR. HANSEN: Thank you, sir.

6 [Thereupon this portion of the

7 Senate Rules Committee hearing was

8 terminated at approximately 12:02 P.M.]

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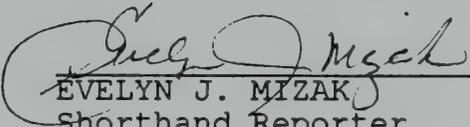
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- 19 SENATOR DON PERATA
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- 21 MICHAEL V. ABBOTT, Program Administrator
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- 22
- 23 GARY COOPER California Association of Schools of Cosmetology
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Devry University
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- 27 RICHARD BOYER
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CHAIRMAN BURTON: E. Lynn Brown, Member, ABC Board.

MR. BROWN: Thank you, sir.

CHAIRMAN BURTON: Go ahead, sir. Do you have something to say?

You're here to be confirmed for a member of the ABC Board. Do you want to give your qualifications?

MR. BROWN: All right.

I am E. Lynn Brown, and I happen to be the presiding President of the Ninth Episcopal District of the Christian Methodist Episcopal Church, which covers Alaska, Arizona, California, New Mexico, Oklahoma, Oregon and Washington. My base, of course, is in California, and my residence is in Los Angeles.

And I am originally a country boy from Tennessee. Of course, I was elected Bishop and sent to the west coast. Graduate of Lane College; graduate of ITC in Atlanta, Georgia; graduate of McCormick in Chicago.

And I feel that I am ultimately qualified in that I am interested in holistic ministry. And when you're interested in holistic ministry, that means you dive off into any labyrinth, including alcohol beverages, because I feel that I can be a lot of help in that area. So, I think I'm imminently qualified.

CHAIRMAN BURTON: Senator Knight.

SENATOR KNIGHT: I don't have any questions.

1 CHAIRMAN BURTON: Senator Hughes.

2 SENATOR HUGHES: I'd like to move the nomination,
3 If there's no objection.

4 CHAIRMAN BURTON: Any witnesses in opposition to
5 this gentleman?

6 Do you have any family here with you, sir?

7 MR. BROWN: My wife is here.

8 CHAIRMAN BURTON: Do you want to introduce her?

9 MR. BROWN: Yes, my distinguished honorable
10 Chairperson, let me present to you the apple of my eye and the
11 quintessence of beauty, Gladys Deloris Stephens Brown.

12 CHAIRMAN BURTON: Secretary, call the roll.

13 SECRETARY WEBB: Senator Hughes.

14 SENATOR HUGHES: Aye.

15 SECRETARY WEBB: Hughes Aye. Senator Knight.

16 SENATOR KNIGHT: Aye.

17 SECRETARY WEBB: Knight Aye. Senator O'Connell.

18 SENATOR O'CONNELL: Aye.

19 SECRETARY WEBB: O'Connell Aye. Senator Burton.

20 CHAIRMAN BURTON: Aye.

21 SECRETARY WEBB: Burton Aye. Three to zero.

22 CHAIRMAN BURTON: We'll hold the roll open on
23 all matters for Senator Lewis.

24 Thank you, sir, and congratulations.

25 MR. BROWN: Thank you. All of you, thank you.

26 [Thereafter, SENATOR LEWIS added
27 his Aye vote, making the final
28 vote 5-0 for confirmation.]

1 CHAIRMAN BURTON: Jack Cox. Mr. Cox is
2 nominated for the Unemployment Insurance Appeals Board.

3 Do you have a statement?

4 MR. COX: Yes, sir.

5 Good afternoon, Senators. My name is Jack Cox,
6 and I am seeking confirmation as a member of the California
7 Unemployment Insurance Appeals Board. I was appointed to this
8 position on March 10th of this year.

9 As you know, the Appeals Board is responsible for
10 conducting hearings and issuing decisions regarding claims for
11 unemployment and disability benefits, and employment tax
12 matters. The initial hearings and decisions are heard in eleven
13 Offices of Appeals throughout the state. The losing party may
14 appeal to the second level, which is the Appeals Board.

15 In the fiscal year ending June, 2000, the Office
16 of Appeals heard and decided 205,388 cases. The Appeals Board
17 reviewed and issued 13,419 decisions.

18 While the state's unemployment rate continues to
19 be low, our figures indicate the agency's workload is actually a
20 little higher than last year's.

21 My professional background has been as a member
22 and official of organized labor for the past 38 years. I bring
23 a working person's perspective to the Board. I believe this
24 perspective is valuable not only in the individual cases I
25 decide, but also when working with the other Board members in
26 discussing and deciding agency policies.

27 I thank you for your consideration.

28 CHAIRMAN BURTON: Senator Lewis.

1 SENATOR LEWIS: No questions.

2 CHAIRMAN BURTON: Are you here to introduce
3 Mr. Cox, Senator Karnette?

4 SENATOR KARNETTE: Right.

5 I just wanted to say he's a good friend of mine.
6 I've worked with him many years. He's great.

7 I encourage you to endorse him.

8 SENATOR KNIGHT: That takes care of that. I'm
9 voting no.

10 [Laughter.]

11 CHAIRMAN BURTON: I could have told her.

12 Pete, do you have any questions?

13 SENATOR KNIGHT: No questions.

14 SENATOR HUGHES: No questions.

15 CHAIRMAN BURTON: Do you have any family with you
16 today, Jack?

17 MR. COX: Just my family, my son and my wife.

18 CHAIRMAN BURTON: Would you like to introduce
19 them?

20 MR. COX: If it's permissible. I won't take too
21 much of your time.

22 The lady standing in the rear is my wife, and the
23 gentleman standing to her left is my son, John Cox.

24 Thank you very kindly.

25 CHAIRMAN BURTON: Jack, stay for awhile. We've
26 got to get a vote here.

27 MR. COX: I want to kiss this lady, if you don't
28 mind?

1 CHAIRMAN BURTON: In front of your wife?

2 [Laughter.]

3 CHAIRMAN BURTON: Any witnesses in opposition?

4 Moved by Senator Hughes. Call the roll.

5 SECRETARY WEBB: Senator Hughes.

6 SENATOR HUGHES: Aye.

7 SECRETARY WEBB: Hughes Aye. Senator Knight.

8 SENATOR KNIGHT: Aye.

9 SECRETARY WEBB: Knight Aye. Senator O'Connell.

10 SENATOR O'CONNELL: Aye.

11 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

12 SENATOR LEWIS: Aye.

13 SECRETARY WEBB: Lewis Aye. Senator Burton.

14 CHAIRMAN BURTON: Aye.

15 SECRETARY WEBB: Burton Aye. Five to zero.

16 CHAIRMAN BURTON: Congratulations, Jack.

17 MR. COX: Thank you, sir. Thank you.

18 SENATOR HUGHES: I just wanted Mrs. Cox to know,

19 I'll take care of Ms. Karnette later.

20 [Laughter.]

21 CHAIRMAN BURTON: Odessa Johnson, Member,

22 Regents, University of California.

23 I guess you were in just for a short term?

24 MS. JOHNSON: Yes, sir.

25 I'd like to just address you briefly.

26 CHAIRMAN BURTON: All right.

27 MS. JOHNSON: I just wanted to say --

28 CHAIRMAN BURTON: You did a good job during that

1 time.

2 MS. JOHNSON: Thank you. I should let this go
3 while I'm ahead; right?

4 CHAIRMAN BURTON: That's one school of thought.

5 [Laughter.]

6 MS. JOHNSON: Maybe I'll just say thank you for
7 opportunity to appear before you again. I was here in January,
8 and since that time, I've certainly made myself quite visible in
9 the Valley and throughout the State of California.

10 I've enjoyed every minute of it. I've been there
11 for students, staff, and members of the community.

12 I look forward to the next twelve years serving
13 this great University, the best, I think, in the whole United
14 States.

15 CHAIRMAN BURTON: Did we take care of Ernie's
16 degree yet?

17 MS. JOHNSON: You've got to work on it.

18 CHAIRMAN BURTON: We'll surprise him.

19 MS. JOHNSON: We've got it. We have it planned.
20 You just have to work on him.

21 CHAIRMAN BURTON: We'll have him come for
22 something else.

23 MS. JOHNSON: Yes, you just do it.

24 CHAIRMAN BURTON: Any questions, Members of the
25 Committee?

26 Do you have any family here with you?

27 MS. JOHNSON: My brother's here, James Peterson
28 from Sacramento.

1 CHAIRMAN BURTON: Any witnesses in opposition?

2 SENATOR HUGHES: Move the nomination.

3 CHAIRMAN BURTON: Call the roll.

4 SECRETARY WEBB: Senator Hughes.

5 SENATOR HUGHES: Aye.

6 SECRETARY WEBB: Hughes Aye. Senator Knight.

7 SENATOR KNIGHT: Aye.

8 SECRETARY WEBB: Knight Aye. Senator O'Connell.

9 SENATOR O'CONNELL: Aye.

10 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

11 SENATOR LEWIS: Aye.

12 SECRETARY WEBB: Lewis Aye. Senator Burton.

13 CHAIRMAN BURTON: Aye.

14 SECRETARY WEBB: Burton Aye. Five to zero.

15 CHAIRMAN BURTON: Congratulations.

16 MS. JOHNSON: Thank you all.

17 CHAIRMAN BURTON: Allen Lawrence, member of the
18 CTC.

19 SENATOR POLANCO: Mr. Chairman, with permission
20 of the Chair, I'd like to introduce our nominee.

21 Allen Lawrence and I have known each other for
22 the last 22 years. I've known him before I was elected. He's
23 known me as long.

24 He is a businessman in the San Fernando Valley
25 area, well respected. One of Governor Davis' first appointees,
26 early appointees, to the Transportation Commission.

27 His business is in the insurance, primarily in
28 the trucking area. Is well respected and well known, and I

1 would ask that we move his nomination:

2 CHAIRMAN BURTON: Thank you, Senator.

3 MR. LAWRENCE: Well, it's an honor and a
4 privilege, Senator Burton and Senators, to come before you in
5 front of the Rules Committee today.

6 In the short time I have been on the California
7 Transportation Commission, I've enjoyed it immensely. I think
8 it's a wonderful opportunity for me to do good work for the
9 people of California in public service.

10 And I think that as far as I'm concerned, the
11 California Transportation Commission is really an important
12 position because transportation in California really affects
13 everything. It affects the economy; it affects recreation; it
14 affects the quality of life. So, the decisions that we make on
15 the Commission certainly have great impact to all of the
16 citizens of California.

17 I just really appreciate the opportunity to be
18 here today.

19 CHAIRMAN BURTON: Have you given any
20 consideration to what role local governments can or should play
21 with regard to their financing responsibilities to the TCRF?

22 MR. LAWRENCE: Senator, the TCRF provides over \$7
23 billion, or close to \$7 billion, over the next six years, of
24 which just under 5 billion is for 141 specified projects. And
25 for each project, a designated applicant -- be it Caltrans or a
26 local agency -- must assemble sufficient additional funds to
27 complete the project.

28 Funding sources can come from the regional and

1 interregional portions of the STIP, from federal funds, and from
2 local funds. And the assemblage will vary project by project.

3 Of the remaining \$2 billion provided by the TCRF,
4 most will be controlled locally, be it \$400 million off the top
5 for local streets and roads, or the 40-40-20 percent split of
6 remaining funds for the STIP, local streets and roads and the
7 public transportation account.

8 CHAIRMAN BURTON: Do you have any ideas, has the
9 Commission given any thought to how the state's going to address
10 the expiration of local sales taxes that are going to expire? I
11 think Alameda goes off this year, and then there's going to be
12 several of the self-help county sales taxes for transportation
13 going off.

14 MR. LAWRENCE: Sure. This is a very serious
15 problem. And I think Alameda comes off first in 2002, along
16 with San Benito. And Alameda has a ballot initiative this
17 November. So, hopefully the public will grasp the importance of
18 approving that ballot initiative.

19 But I think that local transportation sale taxes
20 have been a key element in transportation investment over the
21 past decade. They have been relied upon not just for capital
22 projects, but for basic operations for both transit and local
23 streets and roads.

24 Of the current local sale taxes, as I mentioned
25 before, Alameda expires in 2002, and its renewal is on the
26 ballot in November, so we have a short window of opportunity to
27 address is the 16 counties that have sales tax.

28 CHAIRMAN BURTON: Do you have the thing there,

1 Allen, where, after San Benito and Alameda, what's the next?

2 MR. LAWRENCE: I'm not sure, Senator. I can
3 check with staff.

4 CHAIRMAN BURTON: We can find that out, too.

5 MR. LAWRENCE: But I think as far as the
6 Commission itself is concerned, we don't have any magical
7 solution to this problem. We know it's a very serious problem,
8 and I think we have a short window of opportunity to deal with
9 it. And I think, really, it's up to the Legislature and the
10 Governor to work together to find the solution to that problem.

11 CHAIRMAN BURTON: Thank you.

12 Senator Knight.

13 SENATOR KNIGHT: Yes, thank you, Mr. Chairman.

14 Is there any mechanism by which we can evaluate
15 projects from a safety standpoint, looking at roads that
16 developed unsafe conditions? Can we move those projects farther
17 along?

18 MR. LAWRENCE: I know Caltrans has, I believe,
19 addressed safety issues in their shop, the 2000 Shop that was
20 just approved. And I believe that there's a significant portion
21 of funding that is available for the safety issues. And that
22 has become a much more -- of greater paramount importance in
23 Caltrans as it has been presented to the Commission.

24 As far as what specifically can be done to
25 monitor this, I would have to get back to you on that, Senator
26 Knight.

27 SENATOR KNIGHT: I'm not so much concerned about
28 the center dividers, or guardrails, or things like that, but

1 basic projects in terms of widening a road, a whole stretch of
2 highway that has become a death trap for various motorists.

3 MR. LAWRENCE: Yes, and I think I probably know
4 some of those highways that you're referring to. And I have
5 grave concern about them as well, Senator.

6 SENATOR KNIGHT: I was just wondering if there is
7 some way that we can increase the priority based on safety? Is
8 there a mechanism, or is there a condition that you can evaluate
9 from a safety standpoint and say, that then has a higher
10 priority?

11 MR. LAWRENCE: That's an excellent question, and
12 I think it's one that I would be most happy to get back to you
13 in writing on, Senator.

14 SENATOR KNIGHT: Thank you.

15 SENATOR O'CONNELL: Any further questions?

16 Any support witnesses wish to come forward at
17 this time?

18 MR. ASSAGAI: Mel Assagai for the California
19 Trucking Association.

20 The California Trucking association's very proud
21 to offer very strong support for Mr. Lawrence. He is a member
22 of the Trucking Association and someone knowledgeable in all
23 areas of transportation.

24 We urge your strong support.

25 SENATOR O'CONNELL: Any other questions or any
26 other support?

27 Any opposition?

28 Any family here you'd like to introduce?

1 MR. LAWRENCE: No, I do not have any family here,
2 but they're here in spirit, and they've all wished me well,
3 thank you.

4 SENATOR O'CONNELL: Pleasure of the Committee?

5 SENATOR HUGHES: Move it.

6 SENATOR O'CONNELL: Moved by Senator Hughes.

7 Please call the roll.

8 SECRETARY WEBB: Senator Hughes.

9 SENATOR HUGHES: Aye.

10 SECRETARY WEBB: Hughes Aye. Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye.

13 SECRETARY WEBB: Senator O'Connell.

14 SENATOR O'CONNELL: Aye.

15 SECRETARY WEBB: O'Connell Aye. Three to zero.

16 SENATOR O'CONNELL: Congratulations,

17 Mr. Lawrence. Recommend to the Floor.

18 MR. LAWRENCE: Thank you.

19 SENATOR O'CONNELL: We'll leave the vote open for
20 Senator Burton and for Senator Lewis.

21 [Thereafter, SENATOR LEWIS and
22 SENATOR BURTON added Aye votes,
23 making the final vote 5-0 for
24 confirmation.]

25 We'll now ask Merle Rabine to come forward. He's
26 the appointee for the Workers Compensation Appeals Board.

27 Welcome.

28 Senator Dunn.

1 SENATOR DUNN: Thank you, Mr. Chair. I'll take
2 only a brief moment here, because this individual, as you'll see
3 from his record and from his own comments, speaks for himself.

4 But it is my personal honor to introduce to the
5 Committee and strongly support his nomination. He is an
6 individual that is not only a at least former neighbor, a
7 friend, but also an individual that comes out of the Orange
8 County legal community, who, for the past 15 years, I have
9 watched practice. And it is through those associations as a
10 neighbor, as a friend, and as a fellow colleague in the legal
11 profession in Orange County I come to speak very briefly on
12 behalf of Merle.

13 This is an individual who, when you look at
14 issues such as intellect, professional talent, integrity, and
15 perhaps most importantly for the position for which he has been
16 nominated, fairness. All four apply to this individual in
17 unmatched quantities. I think there is no one more deserving,
18 who will more fulfill the duties that he would assume in
19 accepting this position as Chair of the Workers Compensation
20 Appeals Board than the individual sitting next to me, Merle
21 Rabine.

22 Again, I underscore that I recommend him with the
23 highest, highest of emphasis from this individual who has come
24 to know him over the years on a very personal basis.

25 Thank you.

26 SENATOR O'CONNELL: Thank you.

27 Mr. Rabine.

28 MR. RABINE: Thank you, Senator Dunn.

1 I'm an attorney. I've been in practice since
2 1979. And from 1979 to April of this year, I represented
3 injured workers in Workers Compensation cases.

4 I was President of the California Applicant
5 Attorneys Association in 1989. And Senator O'Connell will
6 remember that, I think, when the first round of Workers
7 Compensation reform went through, and was around for next
8 rounds.

9 Since I was appointed to the Appeals Board, I
10 think I've been involved in deciding more than 700 cases.

11 I'm very grateful for the people who have come
12 forward to support me, and also pleased that, as far as I know,
13 as of now, there's been no opposition.

14 So, I'm pleased to be here. I'll be happy to
15 answer any questions.

16 SENATOR O'CONNELL: Questions of the Committee?
17 Any support witnesses wish to come forward
18 briefly?

19 MR. MARCUS: Marc Marcus, California Applicant
20 Attorneys Association.

21 It's my privilege to support.

22 SENATOR O'CONNELL: Thank you.

23 MR. BRAKENSIEK: Carl Brakensiek on behalf of
24 California Society of Industrial Medicine and Surgery.

25 I've known Merle for nearly 20 years, and what
26 Senator Dunn said about him is absolutely correct. He's one of
27 the most honorable and brilliant Workers Compensation attorneys
28 I've ever met, and I heartily endorse him.

1 SENATOR O'CONNELL: That's a lot of experience.
2 Any opposition wish to come forward at this time?
3 Any of your family members?

4 MR. RABINE: Yes, I'd like to introduce my wife,
5 Leslie.

6 SENATOR O'CONNELL: What's the pleasure of the
7 Committee? Senator Hughes moves. Please call the roll.

8 SECRETARY WEBB: Senator Hughes.

9 SENATOR HUGHES: Aye.

10 SECRETARY WEBB: Hughes Aye. Senator Knight.

11 SENATOR KNIGHT: Aye.

12 SECRETARY WEBB: Knight Aye.

13 SECRETARY WEBB: Senator O'Connell.

14 CHAIRMAN O'CONNELL: Aye.

15 SECRETARY WEBB: O'Connell Aye. Three to zero.

16 SENATOR O'CONNELL: We're going to keep it on
17 call for Senator Burton and Senator Lewis. Congratulations.

18 MR. RABINE: Thank you.

19 SENATOR O'CONNELL: Thank you very much,
20 Mr. Rabine.

21 [Thereafter, SENATOR LEWIS and
22 SENATOR BURTON added Aye votes,
23 making the final vote 5-0 for
24 confirmation.]

25 SENATOR O'CONNELL: Supervisor Achtenberg, come
26 forward and move into the Trustees area. Welcome.

27 MS. ACHTENBERG: Thank you, Senator. Good
28 afternoon to all the Senators.

1 It's a real honor for me to be here before you.
2 I'm the daughter of immigrant parents. They, who had no formal
3 education, hungered for a better life for me and my sisters and
4 brothers. They struggled economically to settle in Inglewood,
5 California so that we might receive the best public education
6 possible, and we did receive that education.

7 They managed to send each of the four of us to
8 the University of California at Berkeley, where we successfully
9 matriculated, and three of us went on to graduate school. They
10 gave us a gift of incalculable value, and the people of the
11 State of California made a concomitant investment in us, which
12 it is now my privilege to give back in part by being appointed
13 and being allowed to serve, should you choose to confirm me, as
14 a Trustee of the California State University system.

15 The CSU is an integral part of California's
16 remarkable, unique system of higher education, and it would be
17 an extraordinary privilege for me to be allowed to serve.

18 Members of this Committee understand quite well
19 the challenges that the CSU faces over the next eight to ten
20 years. Managing enrollment growth will be an enormous
21 challenge, but I believe the administration of Chancellor Reed
22 and the current Board of Trustees is absolutely up to the task.
23 I will enjoy very much the opportunity to serve with them in
24 helping to manage that enormous enrollment growth that we
25 anticipate.

26 Teacher preparation is the other major challenge
27 that we face. The people of the State of California will depend
28 enormously on the CSU to meet that challenge, and it will be my

1 privilege, should you allow me to serve as a Trustee, to help
2 participate on the Board of Trustees to meet that challenge.

3 Finally, remediation for our first -- for our
4 students who have received inadequate preparation in English and
5 math will be the other significant challenge that we face.
6 Again, it will be indeed my pleasure and my responsibility,
7 should you allow me to serve as a Trustee, to help our system
8 meet those major challenges.

9 As you pointed out, Senator O'Connell, I have
10 been County Supervisor. I have been a civil rights lawyer for
11 more than 25 years. I have been HUD Assistant Secretary. I
12 have served on the board of the Federal Home Loan Bank of San
13 Francisco and other boards and commissions.

14 It would indeed be an honor, a privilege, and a
15 pleasure should you allow me to continue to serve as a Trustee
16 of the CSU, and one that I would take enormously seriously, and
17 work very diligently to discharge not only in my own behalf and
18 behalf of my family and my community, but on behalf of the
19 people of State of California.

20 CHAIRMAN BURTON: Senator Speier.

21 MS. ACHTENBERG: This is one of my two
22 distinguished Senators.

23 SENATOR SPEIER: Mr. Chairman and Members, I'm
24 delighted to join with the Pro Tem in endorsing the appointment
25 of Ms. Achtenberg.

26 With the exception of one minor lapse of judgment
27 in her entire political and professional career --

28 MS. ACHTENBERG: More than one.

1 CHAIRMAN BURTON: He ain't here.

2 SENATOR SPEIER: -- she has shown herself to be
3 just very professional, extraordinarily gifted, and just a fine
4 legal mind.

5 And while I know she skipped through her prepared
6 statement, I read it very closely. It's very clear that she's
7 already captured the essence of what the challenges are before
8 our CSU system and will provide us, I believe, with outstanding
9 guidance and leadership.

10 And the fact that she has served on federal level
11 and on the local level, and most recently with the Chamber of
12 Commerce in San Francisco, shows that she is indeed versatile
13 and can work with various entities and factions.

14 So, I think she's an outstanding choice, and I
15 wholeheartedly endorse her.

16 CHAIRMAN BURTON: Senator Knight.

17 SENATOR KNIGHT: No questions.

18 CHAIRMAN BURTON: Senator Hughes --

19 SENATOR HUGHES: Why'd you move out of my
20 district?

21 [Laughter.]

22 MS. ACHTENBERG: Sorry. I loved every moment,
23 though, living there, Senator.

24 SENATOR HUGHES: Since you said you were sorry,
25 I'll have to think about forgiving you.

26 CHAIRMAN BURTON: She went from the Castro Valley
27 to Castro.

28 SENATOR HUGHES: She was born in Inglewood.

1 CHAIRMAN BURTON: Senator O'Connell.

2 SENATOR O'CONNELL: I hope you move into my
3 area.

4 The one heads-up I wanted to just raise is an
5 issue that the faculty has raised recently, within the last
6 month or so, or less than that, and brought to my attention, in
7 terms of a study that has come out in terms of potential
8 inequities in terms of the distribution of some of the revenue,
9 the money that's administered locally by the college
10 professors.

11 That's an issue that the faculty has raised of
12 potential gender discrimination, which I know you have fought
13 your whole political life against.

14 And for you and your two colleagues who will be
15 succeeding you here, that's an issue I know that's very
16 important to the faculty, many of us here, and you're going to
17 be part of that solution, to make sure that, if there's a
18 problem, it can be addressed, and to help address that on each
19 campus. It varies widely, as I understand it.

20 I've looked at this independent study, and just
21 any additional information that you get, and help that get
22 resolved would be, I think, in everyone's best interest.

23 So, that's just my one heads-up comment.

24 MS. ACHTENBERG: We are aware of the assertion
25 that certain elements of the newly instituted merit pay system
26 appear to favor men as compared to women.

27 But I want to underscore, and it may be that the
28 Chancellor will want to comment on this, but we are taking it

1 very seriously. Our administration is looking into it. We are
2 testing the assertion and would be happy to present this
3 Committee with the results that we determine.

4 But our preliminary assessment is that that
5 perception may not be, in fact, the reality, but we don't have
6 all the information yet.

7 SENATOR O'CONNELL: Thank you for being aware of
8 that issue.

9 MS. ACHTENBERG: Thank you, Senator.

10 SENATOR HUGHES: I have a serious question now.
11 CSU doesn't have any redirection policy for
12 students who wants to gain entrance into the system.

13 The UC system has a redirection policy. If you
14 can't get into Berkeley, they say you can get into Santa
15 Barbara, or you can get into Riverside, or something like that.

16 Do you think, with the crowded number of
17 applications for admissions to CSU, that your system should have
18 something comparable to redirect, and not just discourage
19 students and say to them, "The doors are closed to the campus of
20 your choice."

21 Have you thought about that?

22 MS. ACHTENBERG: It's my understanding, Senator,
23 that first priority in admission is given to otherwise qualified
24 community college transfer students. Second priority is given
25 to completely qualified students from the high schools who are
26 seeking admission to CSU for the first time.

27 And added to that is a local preference that we
28 recently enacted that is particularly made available for -- so

1 many of our students are place-bound, so that gives them a
2 preference, should any one of the CSU campuses be impacted,
3 meaning that they have more applications, qualified
4 applications, than they can otherwise accommodate.

5 So, to some extent we have addressed that, at
6 least with regard to local students. Beyond that, I'm not
7 familiar with whatever redirection policy might be appropriate.

8 SENATOR HUGHES: Well, the thing that saddens me
9 about this is that, all a student has to be is someone of meager
10 means and is rejected. That may be the end of their quest for
11 going to college. That bothers me.

12 The mission of the CSU system is tremendous, and
13 certainly they're well known for their teacher training program,
14 and we need teachers. And they have other fine programs, too.

15 And since we've done away with a lot of the
16 special admissions programs and everything, I mean, it really
17 bothers me to say that the CSU system is going to say, "Well,
18 since you can't get into the campus of your choice," that these
19 students may never, ever come back again.

20 Does that bother you?

21 MS. ACHTENBERG: It is bothers me.

22 SENATOR HUGHES: Are you thinking about what you
23 can do to solve that problem?

24 MS. ACHTENBERG: I had not been thinking about it
25 heretofore, but now that you have brought to my attention --

26 SENATOR HUGHES: I knew you were good. You had
27 good roots from Inglewood.

28 I'm serious about that. I think it's very, very

1 important that students not be turned away early on. And
2 especially if they're students of meager means. And they know
3 that they have a CSU campus not too far from their home. This
4 has probably been their ambition from the moment that they
5 graduated from high school, some day they would get into that
6 institution.

7 So, the UC system is a little bit more elitist.
8 But even with their elitist attitude, they have a program that
9 redirects.

10 Do you feel that you want to take a leadership or
11 instill in your fellow Trustees the opportunity to give these
12 students some other recourse, not just to shut the door in their
13 face?

14 MS. ACHTENBERG: That's what the CSU is there
15 for. So, to the extent that we don't have an adequate policy at
16 this point, I absolutely will undertake the responsibility to
17 look into this, to discuss it with our educational policy
18 people, and to get back to you with what it is that we're doing.

19 SENATOR HUGHES: I have all of the confidence in
20 the world in you, looking at your background, looking at your
21 experience, that you will be the one to put the key in the door
22 to unlock it so students know that the doors are not closed to
23 them.

24 MS. ACHTENBERG: I'll do the best I can do,
25 Senator Hughes.

26 SENATOR HUGHES: Thank you.

27 CHAIRMAN BURTON: Would you know, or maybe
28 Chancellor Chuck would know, when they came from State College

1 to State University, what, besides fees going up and the
2 letterhead, what changed?

3 CHANCELLOR REED: Nothing changed, seriously.

4 We have maintained open admissions for the top
5 one-third of the California high school students.

6 CHAIRMAN BURTON: It just basically allowed
7 then-Governor Reagan to say he doubled the size of the
8 university program?

9 CHANCELLOR REED: But it was important to provide
10 access that Senator Hughes just talked about.

11 Senator Hughes, we do have a redirection
12 program. But we have not had to use it except at Cal Poly San
13 Luis Obispo. There, we have redirected students to Cal Poly
14 Pomona, and it has worked very well.

15 CHAIRMAN BURTON: How about Cal Poly San Dimas?
16 There's no more Cal Poly San Dimas?

17 CHANCELLOR REED: No more.

18 CHAIRMAN BURTON: It became Pomona?

19 CHANCELLOR REED: The Kellogg family helped with
20 that.

21 This past March, Senator Hughes, this Board
22 really worked very hard to assure all of the students their
23 choice of a local institution as first-time in college and
24 community college transfer.

25 I think we're going to be able to do that for the
26 next three or four years, especially if we can move to year
27 around operations.

28 SENATOR HUGHES: Then there are plans in the

1 making, thank you.

2 CHAIRMAN BURTON: Did you bring any family with
3 you, Roberta?

4 MS. ACHTENBERG: I didn't, Senator.

5 CHAIRMAN BURTON: Witnesses in opposition?
6 Hearing none, moved by Senator Hughes.

7 SECRETARY WEBB: Senator Hughes.

8 SENATOR HUGHES: Aye.

9 SECRETARY WEBB: Hughes Aye. Senator Knight.
10 Senator O'Connell.

11 SENATOR O'CONNELL: Aye.

12 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

13 SENATOR LEWIS: Aye.

14 SECRETARY WEBB: Lewis Aye. Senator Burton.

15 CHAIRMAN BURTON: Aye.

16 SECRETARY WEBB: Burton Aye. Four to zero.

17 CHAIRMAN BURTON: Congratulations, Roberta.

18 MS. ACHTENBERG: Thank you, Senator.

19 CHAIRMAN BURTON: Murray Galinson.

20 MR. GALINSON: Thank you, Senator.

21 CHAIRMAN BURTON: Just to clarify the record, the
22 the person sitting two over from you is not with you?

23 MR. GALINSON: Well, she used to be a friend,
24 Senator. A child by a previous marriage.

25 [Laughter.]

26 CHAIRMAN BURTON? Go ahead.

27 MR. GALINSON: Thank you for giving me the
28 opportunity to speak to you today. I am very pleased to be here

1 and be appointed by the Governor for your confirmation to the
2 California State University Board of Trustees.

3 I might just say very quickly, and I know your
4 time is short, that I am now in probably my fourth career as an
5 adult. I practiced law for sometime; I taught law for sometime,
6 and then I became a banker for a considerable amount of time.
7 And now I'm in my fourth career, which I call semi-retirement.

8 During this time, I am spending most of my time
9 working with inner-city youth and inner-city education issues,
10 in a philanthropic mode. Therefore, when the Governor asked if
11 I would accept this appointment, I did so eagerly. And I'm
12 pleased to be spending much of my time, I hope, in the next few
13 years, working in this position.

14 I'm a graduate of public high school, public
15 university, and public law school, and know the importance of
16 public education. California has for many years been a leader
17 in this field, and I think the CSU system is critical in its
18 role for California education, especially as it relates to
19 teachers, qualified teachers, of the K-12 school system.

20 I think one of the issues that I think we have to
21 face is the continuing access to California's young people to
22 universities. We all know about the numbers of students that
23 are going to impact the schools, or affect the schools -- I
24 shouldn't use the word impact -- affect the schools over the
25 next few years, and I think it is very important for the CSU
26 system to be working with these students to create qualified
27 teachers for the K-12 system, qualified social workers, and
28 people in other health fields, as well as our future business

1 leaders.

2 I really feel as a Trustee of the California
3 State University system that I can make a difference for the
4 young leaders of tomorrow, and I sincerely hope you will make
5 that possible by recommending my appointment to the Senate.

6 Thank you.

7 I am waiting for the one question, to introduce
8 my family, because I didn't want to usurp that issue.

9 Besides my daughter from a previous marriage, I
10 have my wife of 41 years almost, Elaine is here. And I have my
11 daughter Laura, my son Jeffrey, and my daughters-in-law,
12 Stephanie and Jane.

13 We had to leave one son and his wife home in Los
14 Angeles with their two and-a-half year old daughter and twins of
15 six months. He felt he was a little busy.

16 I didn't bring the grandchildren. There are
17 seven of them.

18 CHAIRMAN BURTON: I think Yvonne more than
19 represents all those who are missing.

20 Any witnesses in opposition?

21 SENATOR HUGHES: Move the nomination.

22 CHAIRMAN BURTON: Call the roll.

23 SECRETARY WEBB: Senator Hughes.

24 SENATOR HUGHES: Aye.

25 SECRETARY WEBB: Hughes Aye. Senator Knight.

26 SENATOR KNIGHT: Aye.

27 SECRETARY WEBB: Knight Aye. Senator O'Connell.

28 SENATOR O'CONNELL: Aye.

1 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Burton.

4 CHAIRMAN BURTON: Aye.

5 SECRETARY WEBB: Burton Aye. Five to zero.

6 CHAIRMAN BURTON: Congratulations.

7 MR. GALINSON: Thank you very much.

8 CHAIRMAN BURTON: Shailesh Mehta, member, State
9 University Trustees.

10 Senator Perata.

11 SENATOR PERATA: Thank you, President Burton,
12 Members.

13 It's an honor to be here this afternoon to
14 present to you the nominee to the State College University
15 system.

16 By the way, two things have changed. Both San
17 Francisco State and Hayward State dropped football, so it's
18 obviously turning to crap.

19 Mr. Mehta is the Chairman and Chief Executive
20 officer of Providian Financial Corporation, which I am proud to
21 say is headquartered in San Francisco, but has a large and
22 growing presence in the East Bay in both Oakland and in
23 Pleasanton. The corporation has 24 billion in assets, 13
24 million customers, and 13,000 employees, both in this country
25 and abroad. As such, it provides consumer services. It is one
26 of the largest, if not the largest, credit card company in the
27 world. They actually gave me a card, so I'm very happy to be
28 presenting Mr. Mehta.

1 In addition to the obvious thing, that he has
2 just a wealth of experience in business, he is a possessor of a
3 Doctorate in Computer Science. He also has aggressively used
4 his experience, his business acumen, and his position within the
5 financial community to donate lavishly his time and resources to
6 education and the arts.

7 And often times, political appointments such as
8 these go to people who have a variety of past interests, and in
9 the ones that we're hearing today, people have a very obvious
10 interest in education and understanding how to make our higher
11 system of education work.

12 And Mr. Mehta could not be a better choice. He
13 is a remarkable individual. I've known him for a short period
14 of time, but his contribution to public education in my own
15 community has been outstanding.

16 So, I'm deeply honored to present him here this
17 afternoon and encourage your affirmative vote.

18 MR. MEHTA: Thank you, Senator and, thank you,
19 Mr. Chairman and distinguished Members of the Rules Committee.

20 I'm deeply honored to be here. I am myself a
21 beneficiary of public education, and a very high quality public
22 education, and a very affordable cost.

23 In developing my own success, whatever I have
24 personally and professionally, the education has played a
25 significant role.

26 When this nomination came about, I was delighted,
27 because it will give me an opportunity to give something back.

28 I have a very brief tenure with CSU, and I was

1 absolutely impressed. It's the largest state university system
2 in the country, with 360,000 students and 23 campuses. I
3 believe it's the backbone of California's higher education
4 infrastructure.

5 And I've observed its accomplishments and its
6 administration. I'm very impressed. But while it has done the
7 admirable job, it does face many challenges in the coming
8 decade. Some of those my colleague, Robert Achtenberg, shared
9 with you: the capacity challenge. We are expecting 130,000 new
10 students in the coming decade, additional new students, what has
11 been referred as Tidal Wave Two.

12 We have a challenge of preparing teachers for
13 K-12. The demand is enormous in the next ten years, and the
14 knowledge base is growing to prepare our students in high school
15 and for the new economy, new technology.

16 And there is the issue of diversity. One thing,
17 I was very impressed when I read that eight of the CSU campuses
18 are among the top twenty most diverse universities in the
19 country. It is 52 percent minority students.

20 So, given those kind of numbers and statistics, I
21 believe my experience as a CEO of a major corporation, my
22 professional training, will be helpful to address some of these
23 needs. I can assure you that I will work very hard and meet the
24 expectations of this Committee, your Legislature, and
25 administration to achieve some of those challenges in the most
26 innovative and creative ways.

27 Thank you very much.

28 CHAIRMAN BURTON: Senator Lewis. Senator Hughes.

1 SENATOR HUGHES: No questions.

2 CHAIRMAN BURTON: Any witnesses in opposition?

3 Moved by Senator O'Connell. Call the roll.

4 Do you have any family here?

5 MR. MEHTA: Yes, sir. I have my wife.

6 CHAIRMAN BURTON: Call the roll.

7 SECRETARY WEBB: Senator Hughes.

8 SENATOR HUGHES: Aye.

9 SECRETARY WEBB: Hughes Aye. Senator Knight.

10 SENATOR KNIGHT: Aye.

11 SECRETARY WEBB: Knight Aye. Senator O'Connell.

12 SENATOR O'CONNELL: Aye.

13 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

14 SENATOR LEWIS: Aye.

15 SECRETARY WEBB: Lewis Aye. Senator Burton.

16 CHAIRMAN BURTON: Aye.

17 SECRETARY WEBB: Burton Aye. Five to zero.

18 CHAIRMAN BURTON: Congratulations.

19 MR. MEHTA: Thank you.

20 SENATOR LEWIS: Next on the agenda is

21 Mr. Michael Abbott.

22 MR. ABBOTT: Thank you, Mr. Chairman and Members,
23 for the opportunity to appear before you today.

24 Let me start by saying that I appreciate the
25 support of the Governor and DCA Director, Kathleen Hamilton, in
26 my quest to turn a very troubled program around, and with the
27 good grace of this Committee and the full Senate, I'll be able
28 to continue in those activities.

1 In my brief remarks today, I want to outline the
2 accomplishments we've made in the last nine months, which is the
3 tenure that I've had so far with this program. I'd like to
4 also outline some areas where we have not made the kind of
5 progress that we all would like. And last, I want to point out
6 some of the vagaries in the law and the regulations that we
7 enforce that get in the way of our taking care of business,
8 frankly.

9 By way of personal background, let me say I bring
10 25 years of public service to the position. I worked as a
11 consultant to Senate B&P Committee and Assembly Consumer
12 Protection and Education Committees. I've been a community
13 college instructor, and I worked for ten years in the Department
14 of Consumer Affairs prior to coming to the Legislature.

15 By way of just very brief program description,
16 the Bureau that I head is in charge of regulating some 3,000
17 private proprietary schools that provide postsecondary degree
18 and nondegree training to some 400,000 students up and down
19 California. They are in three major categories. I started to
20 mention degree granting and nondegree granting are, by far, the
21 primary categories. About 1500 nondegree programs. About --
22 excuse me, about 2,000 nondegree programs, and about 250-300
23 degree programs. There are some other categories, such as
24 registered programs that aren't as many in numbers.

25 Let me outline some of the priorities and some of
26 the accomplishments that we have undertaken since I took over
27 this program at the very end of 1999.

28 Upon looking at the program, which many of you

1 know has been very controversial over more than a decade, we
2 looked at three -- we established three significant priorities.
3 The first was to address and reduce the application backlog.
4 Schools were not getting either their initial or their
5 re-application documents processed as rapidly as possible, and
6 that obviously is a difficult situation for small businesses and
7 large businesses in this state. So, that was a high priority
8 area and remains so.

9 Enforcement is the second priority that we
10 identified. The agency, frankly, had been slow to respond to
11 the complaints of students and also complaints from schools,
12 that their competition was operating without benefit of being
13 licensed, and that that was problematic both for students and
14 for businesses.

15 Then the third area of priority that we
16 identified was with regard to the Student Tuition Recovery Fund,
17 which is a safety net fund that is administered by this program,
18 that compensates students for their tuition losses when schools
19 go belly up, as it were, and students are left without recourse.

20 The previous counsel and the predecessor agency
21 to mine, as well as the first two years of the Bureau, had let a
22 number of Student Tuition Recovery Fund cases languish, with the
23 result that they turned into class action suits. And I was the
24 lucky fellow who came along and found the responsibility to make
25 that right on behalf of those students.

26 When I brought this to the attention of the DCA
27 Director, we determined rapidly that these were valid student
28 complaints that needed to be addressed, and we have taken off on

1 that course. That in itself has created some consternation, but
2 that was a high priority for us as well.

3 In terms of eliminating the backlog, we have
4 done, I think, we've done a very good job in several categories,
5 and not so good a job in other categories. We've eliminated the
6 backlog of applications with regard to degree granting
7 institutions, and teachers certifications, registered
8 institutions.

9 Unfortunately, the backlog with regard to
10 vocational or nondegree programs is still with us.

11 The Legislature, in the course of adopting the
12 budget, adopted budget control language that outlines -- that we
13 helped the Legislative Analyst develop -- that outlines a
14 program for us to not only address those workload backlogs, but
15 also to report on a quarterly basis to the Legislature as to not
16 only our progress with regard to the backlogs, but also student
17 complaints and forth. We're being held to a very short leash,
18 as it were, and appropriately so, in this program by the
19 Legislature.

20 I should also include that the Legislature has
21 made this program subject to sunset review, so there's no lack
22 of interest on the part of the Legislature, and no lack of
23 accountability mechanisms that we're being held to with regard
24 to this program.

25 With regard to the all-important area of
26 enforcement, we have resolved approximately -- I won't say
27 resolved -- we have worked on and revived approximately 300
28 student complaints that were on file and not being worked when I

1 took over the position. Approximately half of those complaints
2 have actually been resolved, presumably to the satisfaction of
3 the students involved. The rest are in the works, pending
4 either receipt of information, or tracking down who the
5 complainants are, or something of that nature. But they all are
6 being actively worked. None has escaped a phone call and/or a
7 letter from our staff asking what the current status is, and
8 exploring with both the student and the institution what they
9 want us to do by way of solving their particular complaint.

10 We also have renewed contacts and investigations
11 with regard to so-called violator schools, which are schools
12 that are operating, or allegedly operating, without the benefit
13 of being licensed or approved, as our law says. We had 289 such
14 complaints on hand when I took over the program. We are --
15 these are difficult cases to work. We send contact letters.
16 All of those complaints are being worked at present. We've sent
17 contact letters to three quarters of those schools and found out
18 that either they have closed, or we brought a few into the
19 regulated fold, and we're working on the rest. We referred a
20 few to the Division of Investigation of the Department of
21 Consumer Affairs because they seem to be reluctant to respond to
22 our overtures to get them into the regulated fold.

23 We've also conducted several enforcement actions
24 that go beyond complaint handling. We have denied the
25 application, that is, put out of business, two massage therapy
26 schools that were, in reality, fronts for other kinds of
27 activities. We worked cooperatively with local law enforcement
28 to do that.

1 Here in Sacramento, we were able to get
2 compliance on the part of a school that was teaching folks to be
3 utility pole climbers. There's no end to the variation in this
4 particular field.

5 We have 15 investigations actively going with the
6 Department of Consumer Affairs, Division of Investigation.

7 And last I will say that we recently prevailed at
8 the appellate court level in our efforts to close down a school
9 that was proven to be a diploma mill.

10 So, our priority has been to reassert the
11 enforcement presence of this program. I think we've established
12 a track record of doing that.

13 I won't say that all of the student advocates or
14 anybody else is entirely satisfied, nor am I, with the progress
15 that we've made regarding enforcement or even the application
16 fund, but we have made some significant steps in a relatively
17 short period of time.

18 The flip side of these achievements is that the
19 well-documented problems that we inherited from the former
20 counsel, many of those are still with us. We've, as I
21 mentioned, we've eliminated backlogs in several categories, but
22 the backlog of re-approval applications remains. Our processing
23 of new applications for nondegree schools ranges between 90 and
24 180 days, rather than the 90 days specified by statute.

25 I want the Committee to understand that with
26 regard to both new and re-approval applications, no business is
27 significantly disadvantaged by our backlogs, because we do,
28 within appropriate statutory timeframes, we do issue temporary

1 permits, both to new and re-approval schools, so that they are
2 not precluded from operating lawfully. And that was not the
3 case, I believe, under the prior administration of this
4 program. So, we are sensitive to the need for businesses to get
5 up and running, and for the need for the need to the bureaucracy
6 not to impose undue burden on those businesses.

7 I mentioned that we worked out with Legislative
8 Analyst a plan for reducing those backlogs. That plan includes
9 making sure that we process on a first-in, first-out basis. We
10 process new applications within statutory timeframes, and
11 re-approvals also within statutory timeframes, and then we, in a
12 separate effort, take the next 18 months to go back and do the
13 site visits associated with the pending re-approval
14 applications.

15 It's kind of a complicated plan, but Legislative
16 Analyst and the Legislature, by virtue of the control language
17 it adopted, feels that this is a credible plan, and it is
18 achievable.

19 I have just one more thing to add about the
20 difficulty that the statute that we enforce imposes with regard
21 to our program.

22 I don't know how many of you really know the
23 history of this program. It was created in 1989 by legislation
24 carried by then-Assemblywoman Maxine Waters. It was reaffirmed
25 in 1997 by Assemblyman Rod Wright's AB 71. That was a
26 monumental and very controversial effort.

27 And the resulting statute, the intent of the
28 resulting statute was to create a drastically streamlined and

1 much more workable statute which would work to the benefit of
2 schools, and the enforcement program, and us as program
3 administrators.

4 The fact is that it hasn't turned out that way.
5 The law is extraordinarily convoluted and complicated, and much
6 in needs of repair. And I would -- while some of you may know
7 what I'm proposing here is opening the flood gates to another AB
8 71 discussion, and you may be reluctant to do that, I think it
9 is absolutely necessary. Let me give you just two very quick
10 examples of how difficult this statute is before I close.

11 The first example is that the re-approval
12 provisions call for us to review renewal applications only to
13 the extent that programs have changed.

14 I'm sorry to go on like this, but there are lots
15 of questions about this program, and I hope to answer them, or
16 at least set the background so that the Committee understands.

17 The new language in the statute calls for a very
18 abbreviated re-approval process. The old language calls for us
19 to put a re-approval application through essentially the same
20 process that a new application goes through, which is an
21 extraordinarily great level of scrutiny.

22 The other statutory glitch -- and obviously, this
23 results in backlogs. Longer process, longer processing times.

24 The other glitch in the statute that I would
25 point out among very many is the fact that our fee schedule that
26 we charge to our licensees is memorialized both in the
27 statute -- has to be approved by the Legislature, in other
28 words -- and, in the year after the Legislature approves it, we

1 are required to adopt regulations that specify that fee
2 schedule.

3 The result is, even if the Legislature were to
4 give us some additional help to try to address our backlogs, it
5 would take two years before we'd have the authority to raise the
6 revenue to do that. Obviously, that's a condition that
7 contributes to our backlogs.

8 There are many, many inconsistencies in the
9 statute that are like this, and I would submit to you that we're
10 doing the best job we can to enforce the law that we have, but
11 we could greatly streamline this law, and we look forward to the
12 help of the Legislature in doing that.

13 With that, noting that the hour is late, I'll be
14 happy to close and entertain your questions, however you want to
15 proceed.

16 Thank you for your indulgence.

17 CHAIRMAN BURTON: Senator Lewis.

18 SENATOR LEWIS: No questions.

19 CHAIRMAN BURTON: Senator Hughes.

20 SENATOR HUGHES: Mr. Abbott, since you have been
21 appointed, how many times have you worked with the AG's Office
22 in asking their assistance to help you with all of these
23 multitudinous legal problems, and how many times have they been
24 responsive or nonresponsive?

25 MR. ABBOTT: We have worked with the Attorney
26 General's Office in several contexts. First of all, in the
27 Student Tuition Recovery Fund area. There have been a couple of
28 cases, and we've also consulted with the AG's Office on how best

1 to handle that. That's out of the San Francisco AG's Office.

2 The AG's Office has also assisted us in pursuing
3 several enforcement cases.

4 In terms of how many times --

5 SENATOR HUGHES: Roughly, no exact number.

6 MR. ABBOTT: I don't know, a dozen. There have
7 been numerous staff contacts between our attorneys and the
8 Attorney Generals, Deputy AGs, but I would say that those are
9 individual conversations. There're probably 10 or 12 matters in
10 general that we've worked with the AG's Office on.

11 SENATOR HUGHES: We have gotten complaints from
12 Legal Aid Foundation that many students had problems, and Legal
13 Aid has referred them to your agencies, and they have not
14 received any acknowledgement of receipt of the complaint.

15 Is that in fact true? Or did some secretary or
16 clerk drop the ball and did not acknowledge receipt of that
17 complaint?

18 MR. ABBOTT: Actually, Senator, I think in the
19 past both things are true. I think in the past, in the two
20 years that the Department of Consumer Affairs had the program
21 before I took it over --

22 SENATOR HUGHES: No, I mean as recently as
23 February of this year. I don't mean --

24 MR. ABBOTT: Now I understand your question.

25 I'm not aware that we do not respond or to
26 acknowledge complaints. However, I am aware of the issue that
27 was raised with you.

28 I'm particularly aware that the Bureau has had

1 one case in which the attorney handling that case has been very
2 diligent in pursuing that issue. And we have had difficulty in
3 connecting back and forth -- some our fault; some
4 inaccessibility on the part of the attorney -- we had difficulty
5 in providing information to the attorney who's handling those
6 cases.

7 I can tell you that I have reopened the case, as
8 it were, to take a look at the more serious implications. Some
9 of the complaints that students had, my understanding, most of
10 the complaints were worked out amicably between the subject
11 school and the students. There are two to three student
12 complaints that my legal staff tells me are still in the works.

13 And the larger issue that Legal Aid has raised of
14 this particular school, that I don't feel comfortable
15 mentioning, has engaged in persistent fraud and
16 misrepresentation, and so forth. We're taking a renewed look at
17 that. That case predates me a great deal, and it was not worked
18 effectively, but we're taking a new look. Under my direction,
19 we're taking a new look at that case.

20 And I do believe, I will say, that I owe this
21 particular staff attorney of Legal Aid of Los Angeles a personal
22 apology, because when she has contacted me, I've made the
23 mistake of referring the calls to staff, and staff does call
24 back diligently and try to resolve those issues.

25 I can understand how my failure to make that
26 return phone call personally has been interpreted as negligence
27 or inattention on my part.

28 SENATOR HUGHES: I don't think that's the nature

1 of the complaint. I'm sure that anyone would realize that an
2 agency as large as yours, you have numerous complaints.

3 But is there a form letter, or some
4 acknowledgement that this complaint has been received, and you
5 are currently working on it? Is that the kind of thing?

6 I'm not talking about what happened a year or two
7 ago. I'm talking just months ago.

8 MR. ABBOTT: I understand. Yes, there is such a
9 process. Whether that process is applied as consistently and
10 diligently as it ought to be is probably open to question.

11 And I can assure you that we will do better in
12 that regard. That's just not appropriate, to drop the ball on
13 complaint acknowledgements. That's absolutely not acceptable.

14 SENATOR HUGHES: But if people don't hear from
15 your agency, then they assume that nothing's being done, and
16 they're being ignored; right?

17 MR. ABBOTT: That's a fair assumption, and I do
18 take responsibility for that. I would react the very same way
19 that the students are and Legal Aid is if I were confronted with
20 an agency that did not respond to my complaint.

21 Your point and their point are very well taken.

22 SENATOR HUGHES: Thank you.

23 CHAIRMAN BURTON: Witnesses in support.

24 Excuse me, Senator Polanco.

25 SENATOR POLANCO: Mr. Chairman, Members,
26 Mr. Abbott, at one point in time, was a committee consultant of
27 Business and Professions at the time I had the opportunity to
28 chair that committee. He comes before me in the capacity,

1 budget capacity, as Subchair on Administration, funding it.

2 The issues that Ms. Teresa Hughes raised are very
3 important. Student rip-offs had occurred. They've been a major
4 problem.

5 I think that Mike Abbott brings the kind of
6 integrity and the kind of commitment to ensure that we bring
7 forward the changes necessary to address that particular issue
8 that we are all concerned with.

9 I've known him for sometime. It's a difficult
10 Bureau, one of the most difficult, because of the history that
11 has existed there.

12 I'm here to ask that we support his nomination.
13 Thank you.

14 CHAIRMAN BURTON: Other witnesses?

15 MR. COOPER: Mr. Chairman, Gary Cooper,
16 representing the California Association of Schools of
17 Cosmetology.

18 I've worked with Mr. Abbott for about 10 years
19 dealing in cosmetology issues, and he has always proven to be
20 very responsive. The cosmetology schools of California are
21 very excited about having him in the position, and we strongly
22 support his confirmation.

23 Thank you.

24 CHAIRMAN BURTON: Ron Tom, representing the
25 University of Phoenix and Devry University.

26 We've seen a significant improvement in the
27 Bureau since Mr. Abbott took over. The professionalism,
28 organization, and efficiency we've recognized since he took over

1 has greatly improved over the previous administration, previous
2 counsel.

3 Thank you.

4 MR. BOYER: Rick Boyer. I'm a private citizen at
5 this point, but I've worked with the Bureau both before and
6 after Mr. Abbott took over. I was president of a university
7 that was regulated by the Bureau.

8 Also saw a great improvement since Mike took
9 over. I think it is significant that some months after his
10 appointment, the Bureau received the nation's highest approval
11 rating for education programs for veterans, and I think that's
12 significant, in light of the fact that the Bureau probably
13 regulates 25 percent of the private schools of the country.

14 MR. EDWARDS: Senators, my name is Jim Edwards. I
15 own a beauty school in Salinas, California. I'm a co-founder of
16 the CASC that Gary Cooper was talking about.

17 We're here on behalf of Mr. Abbott. We've seen
18 major changes in the way we get input back and forth from their
19 agency now.

20 Prior to him coming, we'd make a call. No calls
21 were ever returned. Now we have compliance. Things are working
22 in place. It's a long way down the road.

23 Thank you.

24 MR. FEDERICO: Gary Federico, Federico
25 Sacramento, and I'm also here in support of Mr. Michael Abbott.

26 The last ten years, being caught up into this
27 regulation since 1989, where 125 new rules and regulations hit
28 our types of schools, it's amazing over the last nine months of

1 how effective they've become.

2 Personally, where I was resolved in a particular
3 school investigation, and proud to say, though, we're airing it
4 out. It's getting resolved. A student complaint comes in, the
5 next day we're handled very effectively. That's for Senator
6 Hughes as well.

7 So, all I can do is give my support to
8 Mr. Michael Abbott one hundred percent.

9 MR. MCHALE: Terry McHale with Aaron Read and
10 Associates.

11 And I just wanted to say that one of the only
12 advantages --

13 CHAIRMAN BURTON: Who do you represent?

14 MR. MCHALE: We represent those who worked in B
15 and P, Business and Professions Committee when Mr. Abbott was a
16 consultant. And we were able to deal with him on a great many
17 issues.

18 For those of us who were new in the building in
19 those days --

20 CHAIRMAN BURTON: You're not among the regulated,
21 or among those doing business --

22 MR. MCHALE: Yes, sir. We're among those who
23 admire him for the fact that he mentors young people, but that
24 he also kind of moderates the more cynical. He's just an
25 excellent person and we support him.

26 CHAIRMAN BURTON: Anybody here from a barber
27 college? Do you regulate those?

28 MR. ABBOTT: We do.

1 CHAIRMAN BURTON: They still in existence?
2 Barber college used to teach you how to shave with a straight
3 razor.

4 MR. ABBOTT: It's probably a good thing, Senator,
5 that I haven't heard about them lately.

6 CHAIRMAN BURTON: Witnesses in opposition?

7 MR. SMITH: Thank you, Senator Burton and
8 Committee Members. I'd like to thank you for this opportunity
9 to speak.

10 My name is Bob Smith. I'm owner of Pacific Coast
11 Horseshoeing School in Sacramento. I'm a member of the Higher
12 Education Law Project. We're a nonprofit corporation that
13 assists very small schools in compliance issues, and I'm
14 speaking on their behalf as well as my own.

15 I'm current member of the Advisory Council to the
16 Bureau, and a past voting member for the Council for Private
17 Postsecondary and Vocational Education.

18 I think the question here today is, is the
19 Private Postsecondary and Vocational Education sector better off
20 today under the leadership of Michael Abbott than it was a year
21 ago? And I'd have to say, unfortunately, that's not the case.

22 The Bureau itself is not better off. Massive
23 staff turnovers of career DCA Employees, and interoffice battles
24 have left that agency paralyzed and with sagging morale.
25 Schools and students have to fight with a constant flux of new
26 staff who need time to become proficient in this very complex
27 law.

28 I spoke to a woman two weeks ago that had four

1 different education specialists in her attempt to get her school
2 approved.

3 I don't think the public is better off than it
4 was year ago. We still have a plethora of unlicensed schools
5 all over the state.

6 The Higher Education Law Project requested five
7 items from the Bureau under the Public Records Act in January of
8 this year. After many meetings, and letters, and promises, we
9 have received the complete information on one item, partial
10 information on another, and have been consistently delayed on
11 the other three. This has served to block a citizen's inquiry
12 that would have allowed us to present hard data on what we feel
13 are wrongful acts created by this agency.

14 Existing schools are not better off than they
15 were a year ago. The backlog for re-approval is overwhelming.
16 The Bureau's requiring all schools to submit a complete
17 application for renewal for their license as if they were a new
18 school, along with maximum fees.

19 This is unlike any state licensing agency, which
20 was the -- Section 94840 was the Legislature's remedy for
21 streamlining the re-approval process, easing the financial
22 burden and workload on schools, and removing this backlog from
23 the Bureau.

24 New schools are not better off than they were a
25 year ago. The law requires the Bureau to give either a
26 temporary approval or a denial within 90 days of the receipt of
27 an application. Schools are waiting a year or more for
28 temporary approval. During this wait, they have buildings and

1 equipment leased, staff on salary, and no income.

2 A group of artists wanted to start a film school
3 in L.A., well financed, professional. They finally gave up
4 after a year of trying to get a temporary approval and moved
5 their school to Arizona.

6 A cosmetology school in Southern California,
7 after a year of unsuccessful attempts to attain a temporary
8 approval, called their Congressman. He was so convinced of the
9 injustice that he called the Governor's Office on behalf of the
10 school.

11 Shelley Boley here in south Sacramento had a
12 dream of opening her own cosmetology school. For 30 years,
13 she'd run her own shop. She finally decided to open the school.
14 She made contact with the Bureau, received her application,
15 completed the application, sent it back. She then began to make
16 her dream come alive by taking a second out on her property.
17 She borrowed \$47,000 to make improvements, lease space and
18 equipment. She waited for months and months, and nothing. The
19 law requires 90 days for either a temporary approval or denial,
20 but nothing happened.

21 She begged, tried to get help from the Bureau.
22 Now, after nearly a year, she's run out of the money. She's had
23 to sell her salon to pay off the \$47,000 debt, and she's
24 emotionally and spiritually devastated and financially ruined.

25 There're hundreds of Shelleys out there. These
26 are small schools, not the big corporations that we've been
27 hearing about that get endorsed, but the little guys. These are
28 families that sit around their kitchen table, agonizing whether

1 to make the mortgage payments or their lease payments for their
2 new school. They no longer have enough money to do both.

3 Your vote for confirmation is telling the people
4 of California that an unresponsive regulatory agency is
5 acceptable, and to these people, that their personal tragedies
6 don't really matter.

7 I urge a no vote. Thank you.

8 SENATOR LEWIS: Thank you.

9 Questions from Members of the Committee?

10 Did you want to have an opportunity to respond to
11 any of the criticisms there?

12 MR. ABBOTT: Well, I responded in general in my
13 opening remarks. I'm not aware of the specifics of the
14 instances that Mr. Smith talks about.

15 I can tell you that since January of the year
16 2000, we have proceeded to expedite new and re-approval
17 applications. And I would be very surprised to learn that we
18 are anything like the timeframes that he suggests.

19 I will say that we had extraordinarily great
20 difficulty in complying with the Public Records Act requests
21 that Mr. Smith's organization put forward. My chronology
22 differs from the one that HELP sent to the Committee, but the
23 bottom line is that of the five points that they were asking
24 for, two items didn't exist. We supplied one, although they
25 dispute that. And one, I must say, literally died with the
26 staff attorney who was working on that.

27 So, I brought today -- I have for Mr. Smith the
28 items that he -- the two outstanding items that HELP has

1 requested, and I think that finally puts an end to it.

2 I do take responsibility that it has taken us
3 several months to comply with that request. That is not
4 typical, nor is it our intent.

5 SENATOR LEWIS: Any further comments or questions
6 in opposition? We're taking opposition testimony.

7 MR. FEDERICO: In regards to Mr. Smith's
8 conversation in regards to a cosmetology school, Sacramento.

9 SENATOR LEWIS: Wait. Would you identify
10 yourself.

11 MR. FEDERICO: Gary Federico.

12 Shelley Bolay, Bolay's Beauty College, on
13 Stockton Boulevard.

14 The input on that is, that particular school was
15 approved under the Bureau of Private and Postsecondary, but it
16 wasn't approved under the Bureau of Barber and Cosmetology due
17 to the fact it didn't have the proper square footage; it was an
18 illegal operation, due to the fact that I was one that submitted
19 the complaint against them.

20 So, I just wanted to go ahead and recognize that
21 fact, straighten that matter up.

22 Thank you.

23 MR. SMITH: May I respond?

24 SENATOR LEWIS: Why not?

25 MR. SMITH: The argument was not whether or not
26 the operation had the square footage. It was the timetable. She
27 should have known in 90 days that she would not be allowed to
28 operate a school or what the requirements were, not seven,

1 eight, nine months.

2 She became in debt because of the agency's
3 inability to respond within this proscribed 90 days.

4 SENATOR LEWIS: And how much was she off on the
5 square footage?

6 MR. SMITH: She's off by 900 square feet. It's a
7 3,000 square foot minimum. She had no idea that that was
8 required. She wasn't told by the Bureau. It wasn't in the
9 literature she received from Cosmetology, and it was just an
10 error.

11 She would have made arrangements otherwise had
12 she known that.

13 The Bureau's response was, "I guess we overlooked
14 that; I'm sorry."

15 MR. ABBOTT: Senator, I have to say, the
16 cosmetology profession is regulated by both my Bureau and the
17 Board of Barbering and Cosmetology. We regulate all types of
18 vocational schools, and we don't have the sort of particular
19 detailed level of facility requirements and so forth that
20 Mr. Smith describes. Those are a function of regulatory
21 requirements of another agency.

22 That's not to minimize the seriousness with which
23 we take our statutory timeframes. I acknowledged in my opening
24 statement that we, in the past, have had a significant problem.
25 It's a diminishing problem in getting both new applications and
26 re-approvals accomplished, but I think we're making very
27 significant progress in that area. And at least since January,
28 we have been doing our re-approvals on a very expedited basis,

1 even those there is confusion as to the proper interpretation of
2 the statute.

3 CHAIRMAN BURTON: All right, so you approve
4 something. In other words, it's the Barber and Cosmetology
5 Board that sets the fact that their schools ought to have 3,000
6 square feet, or whatever it is?

7 MR. ABBOTT: That's correct.

8 CHAIRMAN BURTON: That's in statute, or is that
9 by reg?

10 MR. ABBOTT: I think that's in their -- that
11 program's regulation.

12 CHAIRMAN BURTON: So, they approve the size of
13 this room, and what do you approve? What's going to get taught
14 in the room?

15 MR. ABBOTT: We approve -- we take note that the
16 curriculum -- again, that's provided to us by the Barber
17 Cosmetology program -- is, in fact, incorporated in the plan
18 that the school provides to us.

19 We also -- we're primarily concerned, Senator,
20 with the credentials of the instructors who are teaching in
21 those schools. We're also very concerned that, with regard to
22 this industry particularly, there's a great deal of federal job
23 training money and state money.

24 CHAIRMAN BURTON: So, I want to open a
25 cosmetology school. So, I send a letter to them and to you?

26 MR. ABBOTT: That's correct. It's not the most
27 expeditious process.

28 CHAIRMAN BURTON: Yes, it seems not.

1 And it would seem to me, and whether it be
2 jointly -- who's over you, the Ed. Committee?

3 MR. ABBOTT: The Ed. Committee and B&P on the
4 Senate side.

5 CHAIRMAN BURTON: Why should B&P be over you?

6 MR. ABBOTT: Well, because we're an agency of
7 the Department of Consumer Affairs.

8 CHAIRMAN BURTON: I understand that, but you deal
9 educational stuff.

10 MR. ABBOTT: Primarily and historically, we have
11 been overseen by Education Committee. When AB 71 was going
12 through the process, the Business and Professions Committee got
13 involved.

14 Our program looks at schools as educational
15 institutions, but they're also primarily businesses, and
16 they're subject to the same kinds of entrepreneurial
17 opportunities by good guys and bad guys as any other business.
18 We have probably --

19 CHAIRMAN BURTON: I guess the question I have, or
20 where I was going is, it seems like a screwed up way of doing
21 stuff. It's got nothing to do with you. It's got to do with
22 the process.

23 Your thing is whether or not these women's
24 teachers were qualified to teach whatever it is they were
25 doing. Or whether or not the people you're doing know how to
26 put on horseshoes.

27 The other side, who is it, Ag., probably looks at
28 whether or not you've got the right size of a barn.

1 It would seem to me there has to be some way of
2 having some kind of coordination. I don't know what the heck it
3 is.

4 MR. ABBOTT: I agree, Senator. And that's one of
5 the areas that I was intending to get out when I suggested that
6 the statute is very convoluted.

7 CHAIRMAN BURTON: All the people under -- what's
8 her name, Adams?

9 MR. ABBOTT: Eileen Adams is the Agency
10 Secretary. Kathleen Hamilton is the Director.

11 CHAIRMAN BURTON: Are they all under her?

12 MR. ABBOTT: Yes.

13 CHAIRMAN BURTON: Wouldn't it make sense for her
14 to try to bring together? No one's in any other agency; right?
15 They're all under Eileen?

16 MR. ABBOTT: I believe that's correct. I can't
17 think of any exceptions.

18 CHAIRMAN BURTON: Well, if they're with other
19 agencies, it could be interagency task force. If it's hers, it
20 could be an intra-agency task force. But they ought to just
21 really figure out how to just have one thing if somebody wants
22 to open a school.

23 One of them looks like a damn local zoning
24 commission decision, and then the other one looks like you're
25 running a legitimate school or a bunch of thieves.

26 MR. ABBOTT: You're absolutely right, Senator,
27 and we do have a Memoranda of Understanding with a number of
28 regulatory boards in the Department of Consumer Affairs:

1 Psychology, Optometry, Marriage Family and Child Counselors.

2 CHAIRMAN BURTON: Let's say -- it's like I've got
3 nothing else to do today -- but let's say it's a cosmetology
4 thing, and it needs 300,000 square feet. What's the damn magic
5 in that, unless it's so many square feet for so many pupils.
6 But otherwise, what's the magic in the size of the square
7 footage?

8 MR. ABBOTT: I'm not aware of any, Senator.

9 CHAIRMAN BURTON: You know, it sounds like years
10 ago, I had somebody that tried to open a business in the City of
11 Palmdale.

12 But it just seems to me that you inherited
13 something that's not much of your doing. I think maybe, just to
14 keep us out of it, but have Eileen Adams look at it, because
15 they aren't statutes.

16 The type of school you have shouldn't necessarily
17 be related to how big it is. If you're going to be limited,
18 you're only going to take ten students, you don't need all that
19 space, unless ten students means ten sinks, and ten this, and
20 ten that, and the others.

21 I think that's something to be looked at.

22 MR. ABBOTT: Senator, I know that Kathleen
23 Hamilton, the Director of Consumer Affairs, is very interested
24 in this issue because she sees a lot of overlap and lack of
25 coordination.

26 CHAIRMAN BURTON: Well, somebody ought to be
27 interested in it, because I sure as hell ain't.

28 Any further questions, Members of the Committee?

1 Move the approval.

2 Thank you, sir. We're very serious about getting
3 them, because what they're doing doesn't -- were there any
4 other witnesses in opposition.

5 Moved by Senator O'Connell. Call roll.

6 SECRETARY WEBB: Senator Hughes.

7 SENATOR HUGHES: Aye.

8 SECRETARY WEBB: Hughes Aye. Senator Knight.

9 SENATOR KNIGHT: Aye.

10 SECRETARY WEBB: Knight Aye. Senator O'Connell.

11 SENATOR O'CONNELL: Aye.

12 SECRETARY WEBB: O'Connell Aye. Senator Lewis.

13 Senator Burton.

14 CHAIRMAN BURTON: Aye.

15 SECRETARY WEBB: Burton Aye. Four to zero.

16 CHAIRMAN BURTON: Congratulations.

17 Keep the roll open for Senator Lewis. Thank you.

18 [Thereafter, SENATOR LEWIS added)

19 his Aye vote, making the final vote

20 5-0 for confirmation.]

21 [Thereupon this portion of the

22 Senate Rules Committee hearing was

23 terminated at approximately 5:16 P.M.]

24 --ooOoo--

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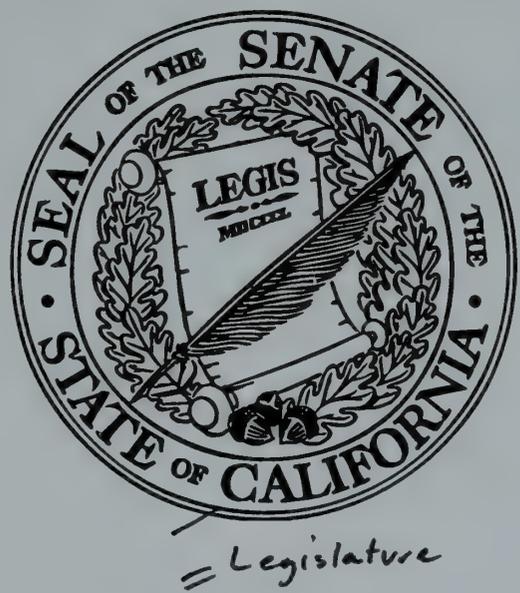
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APPEARANCES

MEMBERS PRESENT

- 1
- 2
- 3 SENATOR JOHN BURTON, Chair
- 4 SENATOR TERESA HUGHES
- 5 SENATOR WILLIAM KNIGHT
- 6 SENATOR JACK O'CONNELL

MEMBER ABSENT

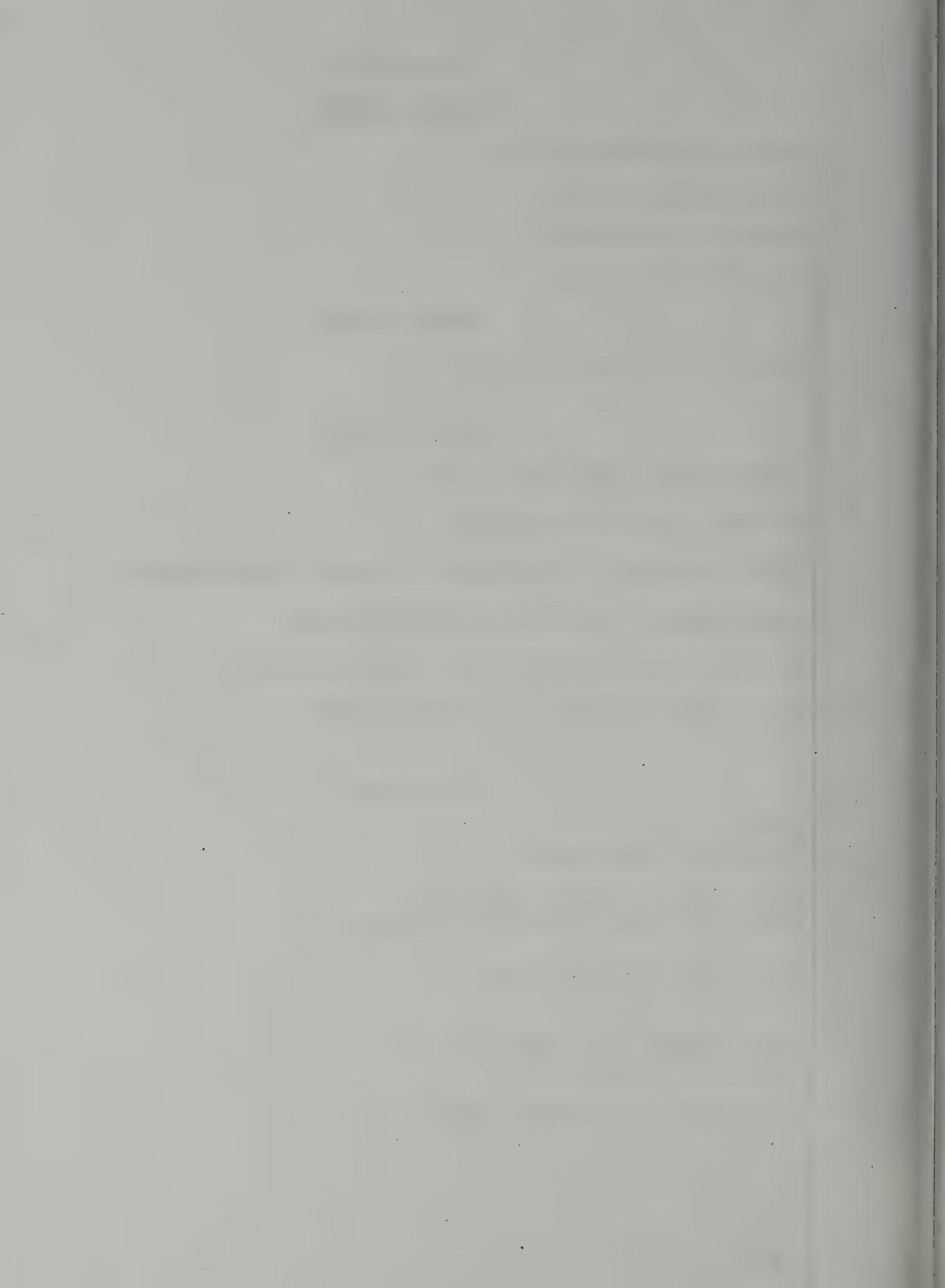
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- 8 SENATOR JOHN LEWIS, Vice Chair
- 9

STAFF PRESENT

- 10
- 11 GREG SCHMIDT, Executive Officer
- 12 PAT WEBB, Committee Secretary
- 13 NETTIE SABELHAUS, Consultant on Governor's Appointments
- 14 WADE TEASDALE, Consultant to SENATOR LEWIS
- 15 FELICE TANENBAUM, Consultant to SENATOR HUGHES
- 16 ANDY PUGNO, Consultant to SENATOR KNIGHT
- 17

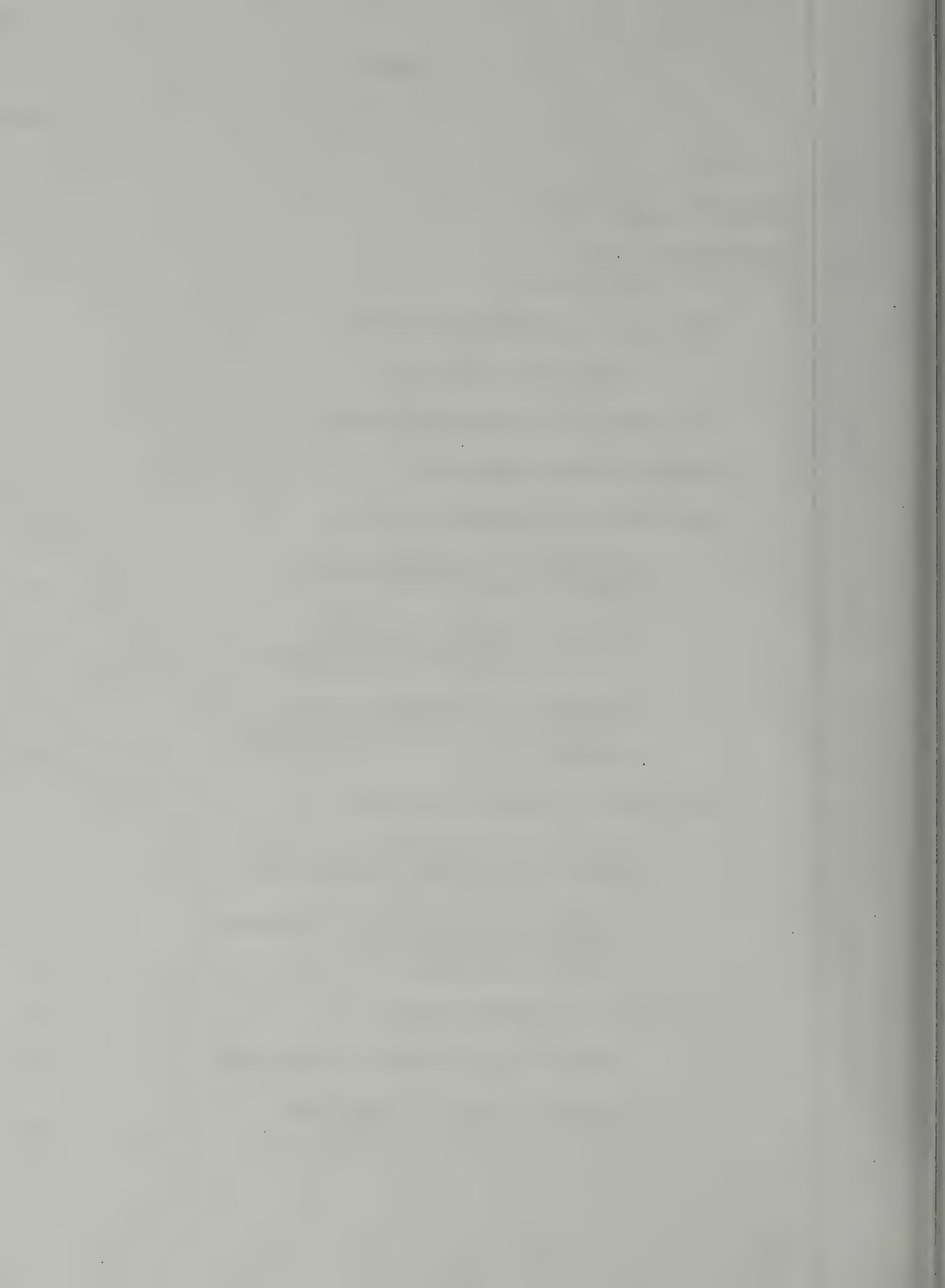
ALSO PRESENT

- 18
- 19 HARRY W. LOW
- 20 Insurance Commissioner
- 21 MARCH FONG EU, Former Ambassador
- 22 Former California Secretary of State
- 23 CECILY BOND, Retired Judge
- 24 Sacramento Superior Court
- 25 JAMES DUVARAS, JR., Retired Judge
- 26 Santa Clara Superior Court
- 27 JOHN FORAN, Former State Senator
- 28



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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Good afternoon, Justice Low, witnesses.

Before we ask you for your statement, before we have the Ambassador come up to introduce you, it's not our intention to ask you to take positions on all of the issues facing the Department. We know that you haven't had a chance to fully deal with the issues and would rather you keep an open mind.

We did follow with interest your testimony at the Assembly Committee and appreciated your answers. We may want to bring you back, not to the Rules Committee, but probably to the Committee on Insurance and conceivably the Budget Subcommittee to ask questions.

We want to hear your statement, give witnesses a chance to testify. The Members of the Committee have been provided with a summary of your judicial opinions, and there may be some questions there.

Again, we subscribe, I think, to a point that was raised by the Speaker, that although you will be a gubernatorial appointee, you're taking an independent constitutional office, as opposed to being part of the administration itself. And we believe that as you were a judge, appointed by governors, once you became a judge, that was a constitutional situation for you to act as the law and your conscience deemed fit. And we hope that the same will take place on the Insurance Commission.

Again, as a judge, you were impartial. And I

1 think that Measure 103, that created the constitutional office,
2 viewed the Insurance Commissioner as being more active and more
3 advocate.

4 So, Judge, would you like to come up.

5 March, would you like to come up? Are you
6 introducing the Judge?

7 AMBASSADOR EU: I'm just testifying.

8 CHAIRMAN BURTON: I will introduce the Judge.

9 Justice Harry Low, long-time friend of mine whose
10 wife, Mayling, taught me how to use chopsticks at the Ku Wah
11 many years ago.

12 JUSTICE LOW: Launched your career and kept it
13 going.

14 CHAIRMAN BURTON: Never looked back.

15 JUSTICE LOW: Senator and President Pro Tem John
16 Burton, and Members of the Senate Rules Committee, I
17 respectfully ask that you confirm Governor Gray Davis'
18 nomination of me as the Insurance Commissioner of California.

19 I welcome this opportunity to serve the people of
20 this state. I pledge to you and to all the Members of the
21 California Legislature that I will use my best efforts to
22 restore trust and confidence in the Department of Insurance.

23 For more than 36 years, I've engaged in public
24 service as a law instructor, Deputy Attorney General, Workers
25 Compensation Appeals Commissioner, and as a trial judge, and as
26 an Appellate Justice. And for the last eight years, I've worked
27 as a full-time mediator and arbitrator.

28 Throughout my career, I've served the community

1 and the legal profession in a variety of civic and charitable
2 organizations, and you have that record, I'm sure, before you.
3 And even while I was a private mediator and arbitrator, I served
4 four years recently as the President of the San Francisco Police
5 Commission, and for the last 18 months as President of the San
6 Francisco Human Rights Commission.

7 If confirmed, I will devote all my energies to
8 this very important post, and I will enforce the laws diligently
9 and justly. The regulatory process must be open, fair, and
10 equitable, and the Insurance Department must protect consumers
11 against unfair practices, as well as excess or discriminatory
12 insurance rates, and against insurer financial instability.
13 Everyone must be served in the most efficient, responsive
14 manner.

15 It's my goal to improve the morale of the
16 Department of Insurance staff and to make improvements in the
17 operations of the Department.

18 I hope to benefit from the valuable and extensive
19 investigation that the Assembly Insurance Committee has
20 conducted. I've had brief discussions with Senator Jackie
21 Speier, Chair of the Senate Insurance Committee, and I will meet
22 with her on September 5th, 2000, and I expect to gain additional
23 insights on the important issues that face the Department.

24 Professor Clark Kelso has also briefed me on many
25 of the key issues, and if confirmed, I expect that there will be
26 a smooth transition.

27 I look forward to the challenge ahead and to be
28 of service to the State of California. I respectfully ask your

1 Rules Committee to give me your favorable consideration in the
2 confirmation process.

3 Thank you very much.

4 CHAIRMAN BURTON: Thank you, Judge.

5 One of the issues that came to light and was
6 fairly controversial was the Conduct Market Exams that the law
7 allows, but does not mandate to be treated as confidential
8 documents. Those documents were made available to the
9 Legislature by a whistleblower. I think those documents helped
10 lead to former Commissioner Quackenbush's decision to step down.

11 The law, as I read it, is permissive in that they
12 may be made public. As Insurance Commissioner, what's your view
13 on making future Market Conduct Exams public, which, as I
14 understand, several other states do?

15 JUSTICE LOW: I've read that law and reviewed
16 that Section 735.5 of the Insurance Code.

17 I think that the confidentiality provisions say
18 what they say, and that there is some discretion in the
19 Insurance Commissioner to make that information available to the
20 public. Certainly, in the legislative oversight
21 responsibilities and certain investigations, that
22 confidentiality provision may have to yield.

23 But there is a certain important public policy
24 that the Legislature has provided, that financial information
25 should be kept confidential to the extent that it may disclose
26 matters that may be harmful to the industry. So, I will respect
27 that in the same way that tax returns and other information,
28 financial information, is confidential.

1 I also respect the fact that whistleblowers may
2 not, as a matter of public policy, be punished or disciplined
3 for violation of any -- for a required violation of a statute or
4 ordinance, or for telling people of improper conduct. And I
5 think it's the balancing of those public policies that the
6 Insurance Commissioner ought to consider.

7 With respect to the Cindy Ossias matter, I
8 certainly concur with Professor Kelso's decision to reinstate
9 her.

10 CHAIRMAN BURTON: Well, putting out financial
11 information that would put a company -- maybe do them damage,
12 but also, I think, the public has a right to know if, God
13 forbid, there was an insurance company that was engaging in, at
14 a minimum description, sharp practices.

15 In other words, the things that we found in the
16 earthquake situation, they were basically doing bad things. I
17 would think that the public should have the right to know that
18 their insurance company, or one they're thinking about --
19 because you drive down the highway now and it's 20th Century,
20 Mercury, AIG. I mean, they're advertising like any other
21 product -- and should have the right to know if they're -- you
22 know, maybe not the integral financial workings, but certainly
23 if they're engaged in practices that, you know, are suspect, to
24 say the least.

25 JUSTICE LOW: My philosophy has always been to
26 run an open shop, as to the extent any information that belongs
27 to the public can be disclosed without violation of any
28 confidentiality provisions.

1 This is a government agency. Public does have
2 the right to know.

3 For ten years, I Chaired the San Francisco Bench
4 Bar Media Committee that emphasized openness. I've worked very
5 close with the San Francisco sunshine laws, and I fully
6 subscribe to the philosophy that government business should be
7 in the open.

8 To the extent that that can be fulfilled, that
9 certainly will be the philosophy that I will use.

10 CHAIRMAN BURTON: I don't know how much time
11 you've had to look into this, Judge, but I would imagine that
12 within Conduct Market Exams, there's certain things that clearly
13 can be made public. All they would do would be let the people
14 know that the company isn't the kind of company you may want to
15 give your premiums to. And stuff that is not of that level,
16 that would be held back.

17 Do you have any plans to seek election to this
18 body? There's a question about it, and I'll ask it anyway, but
19 I think I know. Short of another earthquake that's going to
20 happen at 104 Turquoise, you're not going to think about running
21 for the office.

22 Do you think that Insurance Commissioners should
23 be prohibited from taking contributions from the people that
24 they regulate?

25 JUSTICE LOW: I think as matter of ethics, I
26 would say they should not. And I certainly, as a matter of my
27 practice, will not be taking any contributions. In fact, I will
28 not take any contributions for any political or elective

1 purpose.

2 CHAIRMAN BURTON: Senator Knight.

3 SENATOR KNIGHT: Thank you, Mr. Chairman.

4 Justice Low, you've indicated that the
5 information that was released concerning the Market Conduct
6 Exams, and so forth, was against Insurance Code 735.5, and we
7 have reinstated the individual who released that information.

8 If you believe that information should be made
9 public, then do you have any plans to change the Code so that it
10 is not in violation of the Code when somebody releases that
11 information?

12 JUSTICE LOW: I have no immediate plan, Senator,
13 to propose that. I think that this might be an area for the
14 Legislature to set the policy on what is confidential and what
15 is not confidential. And I will abide by what the Legislature
16 has provided.

17 My general philosophy, however, is to keep
18 matters as open as possible so the public knows what is going
19 on. However, there are certain protections which I fully
20 subscribe to about financial data, financial information, that
21 may be more desirable to keep confidential so as to have
22 accurate and full reporting.

23 SENATOR KNIGHT: I understand your desire to be
24 as open as possible. And I think we all are. We want an open
25 government as much as possible.

26 But where there are codes that provide for the
27 confidentiality of information, then I think we either should
28 change the code or comply with the code and make the data

1 confidential.

2 JUSTICE LOW: Correct. I fully subscribe to
3 that.

4 SENATOR KNIGHT: One other item. Commissioner
5 Kelso has made one of his goals to seek mutual rescission of
6 questionable settlements reached by former Commissioner
7 Quackenbush. He was there on an interim, really, and he is
8 establishing pretty significant areas.

9 Do you believe that he should be doing that, or
10 will you change that?

11 JUSTICE LOW: No, I've discussed this with
12 Professor Kelso. I think that it is a desirable goal to ask the
13 insurance companies to voluntarily rescind those agreements,
14 because there is a possibility that they may face long
15 litigation. There may be some concerns about were these
16 agreements made fairly, and based upon the facts.

17 And I think that, let's rescind these agreements,
18 start off new. And if there had been abuses, then these should
19 be dealt with by the Insurance Commissioner. If there were not
20 abuses, then the agreements and to get money to support a
21 foundation may not be fully supportable.

22 But I think that the concept of rescinding these
23 and starting afresh, and looking at it fairly and impartially,
24 and forcefully, in compliance with the law, is what I think
25 Professor Kelso has sought to do, and I support that.

26 SENATOR KNIGHT: You concur with his judgment in
27 terms of what agreements to rescind and which ones not to?
28 You've evaluated all of them?

1 JUSTICE LOW: The goal is to rescind all of them
2 and to start fresh. And also to allow the Insurance Commission
3 to impose penalties or to review the actions taken by the
4 insurance companies, to suggest corrections, or whatever else,
5 but it would be a fresh start.

6 SENATOR KNIGHT: And you've communicated all this
7 with Mr. Kelso and are in agreement with what he's doing?

8 JUSTICE LOW: Yes.

9 CHAIRMAN BURTON: Senator Hughes.

10 SENATOR HUGHES: Good afternoon.

11 JUSTICE LOW: Good afternoon.

12 SENATOR HUGHES: What on earth are you going to
13 do to try to better the image of the Insurance Department? It's
14 such a tremendous job. What are your plans?

15 JUSTICE LOW: Well, I immediately think that
16 establishing a reputation of fairness, impartiality, not siding
17 one way or the other, is a start.

18 There are some immediate problems that I think
19 will have to be addressed. I think that some of the staffing
20 problems have to be examined. I understand that there are some
21 200-300 vacancies in a 1200-person agency.

22 I think that the legal department could use some
23 help in terms of new technologies to trace their cases better,
24 follow cases, to be more up-to-date.

25 I think the complaint division could be better
26 staffed.

27 I think that there are some reviews of contracts
28 that might have to be made in terms of payments to outside

1 consultants and outside lawyers. The hiring of lawyers for
2 certain individuals who appear before legislative committees,
3 for example, may have to be reviewed and perhaps denied.

4 I think that there will also be some major issues
5 that need very close attention. Certainly, the Northridge
6 earthquake matters need to be carefully reviewed, and I intend
7 to give that very high priority. I think there's a lot of
8 public interest in that, and I will give it full attention.

9 The Holocaust claims, I think, need to be
10 restarted and re-examined so that we can bring social justice to
11 those victims of World War II atrocities.

12 There are a number of such things that I hope can
13 be done very, very quickly, and I intend to address those
14 shortly after my assuming of office.

15 SENATOR HUGHES: What are your thoughts about
16 those Department employees who leaked internal documents? Were
17 they acting appropriately? How do you plan dealing with them?

18 JUSTICE LOW: Well, hopefully, there will not be
19 any improper or illegal activity on my watch. I hope to be able
20 to instill a great deal of responsibility, a sense of ethical
21 performance by everyone. I hope to bring out the very best in
22 the employees to follow what are the mandates, as well as the
23 ethical mandates of our responsibilities in the Insurance
24 Department.

25 As I mentioned, no employee should be and can be
26 disciplined for reporting illegal and improper activity.

27 With respect to the confidentiality provisions
28 that Senator Knight referred to, I certainly think that we need

1 to balance that with the right of an employee to report
2 misconduct.

3 SENATOR HUGHES: Are you going to go back and
4 review any of the alleged whistleblowers? And if you are, what
5 kind of criteria are you going to develop in determining their
6 fate?

7 JUSTICE LOW: I don't know of any other
8 whistleblower, other than the Cindy Ossias case, which I have
9 looked at, and now I hope that's behind us.

10 But if there are other cases, I will look at it
11 from the standpoint of how serious was the reporting of this
12 improper conduct, and was it justified. If it was, then there
13 should be no discipline.

14 If, however, there is a violation by the employee
15 of disclosures that might not be appropriate, then I think there
16 has to be some balancing about how serious the reporting bears
17 upon illegal conduct or improper conduct. And we certainly do
18 not want employees disclosing confidential information if it is
19 for some reason other than to point to an illegal conduct or
20 improper conduct.

21 SENATOR HUGHES: During the course of the Senate
22 Insurance Committee hearings, I had asked Commissioner
23 Quackenbush about how he handled the numerous number of requests
24 for information about earthquake coverage from members of the
25 public, and whether he recorded the numbers of phone calls, and
26 who those calls were from, and whether he answered by letter, or
27 what have you.

28 He was very curt to me. He never gave me a

1 satisfactory answer.

2 How will you handle people who now will say,
3 maybe with a new person in the Insurance Department, we can get
4 some satisfaction?

5 JUSTICE LOW: One, I certainly hope to improve
6 the relationship between Legislators and the Insurance
7 Department. And I hope that this relationship will allow for
8 full exchange of information.

9 I fully believe that in the role of the
10 Legislature, as an oversight responsibility, or in any
11 investigations, say, conducted by the Attorney General or the
12 FBI, that it will be my policy to say that everyone must
13 cooperate, everyone must provide the information requested. And
14 that failure to do so would be a breach of our public
15 responsibility.

16 And I pledge to you that I will be as open as I
17 can possibly be. And I hope that my reputation for courtesy and
18 willingness to provide information will continue, and I expect
19 that it will.

20 SENATOR HUGHES: Do you agree with the AG that
21 the settlements between the Department and the Northridge
22 earthquake insurers were illegal?

23 JUSTICE LOW: Well, I've read that Attorney
24 General's opinion. And I certainly need to study it a little
25 bit more. There are parts of that opinion that cause me to
26 raise some additional questions that I want to discuss with the
27 Attorney General.

28 But if there is a legal basis for proceeding on a

1 factual basis, for proceeding, as the Attorney General seems to
2 suggest, then I intend to fully pursue the setting aside or the
3 rescission of those agreements, those settlement agreements.

4 That is why I support the request that
5 Commissioner Kelso has made to the insurance companies: Let's
6 set these aside now, do it voluntarily, because the next
7 Commissioner may bring a very serious lawsuit that may set it
8 aside, tie you up with litigation, and perhaps that isn't the
9 best course to make.

10 SENATOR HUGHES: I realize that you are aware of
11 the fact that your plate very full. It sounds like you have a
12 plan for attacking that.

13 Thank you.

14 JUSTICE LOW: Thank you.

15 CHAIRMAN BURTON: Under this mutual rescission
16 situation, then the injured parties would have the ability to
17 seek counsel, or how would that work?

18 JUSTICE LOW: I guess the rescission would be
19 that giving money to a foundation, however that was created,
20 would be set aside, or the foundation would continue to operate
21 for valid purposes. And then, the Insurance Department would
22 review the marketing information, and then, if there were
23 misconduct --

24 CHAIRMAN BURTON: So, you're talking about
25 rescissions of the deals between the insurers and the
26 Department? In lieu of paying a fine, they made these
27 contributions?

28 JUSTICE LOW: Right.

1 CHAIRMAN BURTON: They aren't talking about the
2 problems that the homeowners had.

3 JUSTICE LOW: No. I think that that is --

4 CHAIRMAN BURTON: Which make me wonder even more
5 why he spoke out against my bill.

6 JUSTICE LOW: And I certainly don't believe that
7 there is any link, necessary link, between your bill --

8 CHAIRMAN BURTON: And that, because all that's
9 talking about is, the Commissioner found that the companies
10 didn't do everything totally proper. So, there was an option of
11 giving to the foundation, or foundations, or paying a fine. And
12 they took that.

13 So, that's what they're talking about rescinding.

14 JUSTICE LOW: That's right.

15 CHAIRMAN BURTON: They're not talking about
16 protecting the homeowners?

17 JUSTICE LOW: No, that is a separate issue.

18 CHAIRMAN BURTON: Thank you.

19 Witnesses in support, Madam Ambassador.

20 AMBASSADOR EU: Thank you very much, Mr. Chairman
21 and Members of the Committee.

22 Thank you for having me here to testify this
23 afternoon at the confirmation hearing for Justice Harry Low as
24 the next Insurance Commissioner for the State of California.
25 I'm both pleased and honored for this opportunity to speak on
26 his behalf.

27 I am March Fong Eu. I am a recently retired U.S.
28 Ambassador to the Federated States of Micronesia, and a former

1 California Secretary of State.

2 CHAIRMAN BURTON: And a former member of the
3 Oakland School board, as I recall.

4 AMBASSADOR EU: Oh, my. You go back too far.

5 [Laughter.]

6 AMBASSADOR EU: Prior to being Secretary of
7 State, I was a four-term California State Assemblywoman,
8 representing the 15th Assembly District in the East Bay Area.

9 Justice Low was nominated and became a municipal
10 court judge in San Francisco at about the same time I won my
11 first election to the State Assembly.

12 But it is not only in our parallel public service
13 roles that I have known Justice Harry Low. Our friendship and
14 relationship go far beyond that period of our lives. We can
15 safely say that they began at birth.

16 Justice Low's ancestors and my ancestors came
17 from the same village in the Canton Province, which is now known
18 as the Wantung Province. We are both part of a family
19 association that encompasses the descendants those who migrated
20 to America from the far village in Canton Province in China.
21 So, I guess we can call ourselves clan mates.

22 But the similarities go beyond that. My parents
23 owned and operated a hand laundry in the Central Valley, the
24 City of Oakdale, to be exact. Justice Low's parents also had a
25 hand laundry, but in a different town in the Central Valley.

26 When my parents moved to the Bay Area from
27 Oakdale, they sold the Oakdale laundry to Harry's parents.
28 Well, there's nothing unusual in that, not until I tell you that

1 I was born in the back room of that Oakdale hand laundry. And,
2 a few years later, after Harry's folks had had the laundry,
3 Harry was born in the same back room of that same Oakdale hand
4 laundry.

5 To this day, the elders of our family association
6 swear that there must be some magic in that spot where these two
7 Chinese-American public figures emerged. So, now we are not
8 only clan mates, but I guess birth mates.

9 I can honestly say that Justice Low and I have
10 known each other since birth, and also say that the
11 circumstances of our birth justify our claim for being very
12 clean politicians.

13 [Laughter.]

14 AMBASSADOR EU: So, I am pleased and honored to
15 speak on his behalf today. His record of public service speaks
16 for itself. Many speakers to attest to that will follow me.

17 But I add to that by also having had the
18 privilege of knowing Harry as a person, and I can tell you, from
19 observing him during our lifetime, that his integrity, his
20 intelligence, and his hard-working spirit go beyond just his
21 public life. He is one of the most caring and compassionate
22 human beings with whom I am associated, and I might add,
23 related.

24 What better describes my respect for this
25 outstanding person than to tell you that for the five times that
26 I was elected California's Secretary of State, I chose Justice
27 Harry Low to swear me in on each occasion.

28 I know that all Californians will be well-served

1 by Justice Harry Low as the Insurance Commissioner for the State
2 of California.

3 Thank you very much.

4 CHAIRMAN BURTON: Thank you very much, March.

5 SENATOR KNIGHT: With all of that capability,
6 there was no marriage?

7 [Laughter.]

8 AMBASSADOR EU: It's not too late.

9 [Laughter.]

10 CHAIRMAN BURTON: Other witnesses in support.

11 JUSTICE LOW: Yes, Judge Cecily Bond.

12 JUDGE BOND: Good afternoon, Mr. Chairman,
13 Members of the Committee. Thank you very much.

14 I certainly share March Fong's use of "honor"
15 being here today to speak on behalf of Justice Low.

16 I recently retired, for those of you who don't
17 know me, from the Sacramento Superior Court, after serving 20
18 years as a superior court judge, including two terms as a
19 presiding judge.

20 Immediately prior to my appointment to the bench,
21 I served for four-and-a-half years as a Deputy Director and
22 Chief Counsel of the Employment Development Department here in
23 Sacramento.

24 I'm Cecily Bond, Judge Cecily Bond.

25 So, I am very familiar with the administrative
26 duties and the responsibilities of managing a major state
27 department.

28 And, as I indicated, it's my great honor to be

1 here today to support the appointment of Justice Low.

2 I think the essence of an outstanding judge is
3 one who is fair and even-handed to all who appear, but who also
4 has the intellectual capacity to interpret the law wisely, and
5 has the courage and integrity to enforce it fairly. These are
6 the qualities that Justice Low exhibits: fairness, wisdom,
7 integrity, courage, and intelligence.

8 But Justice Low has another very important and
9 crucial character which I think will stand him very good stead
10 as the Insurance Commissioner. His entire career has indicated
11 this. That is, his leadership ability and his administrative
12 experience. He has held numerous leadership positions, as I'm
13 sure his resume, which you have, indicates, including being the
14 Presiding Judge of the Court of Appeal, heading the California
15 Judges Association, and many others, some of which he mentioned
16 this afternoon.

17 His ability to bring diverse and sometimes very
18 conflicting groups, parties, and litigants together, and to
19 achieve a result by mediation, arbitration, which is accepted by
20 all, I think, is a very great skill, and a skill that will hold
21 him and assist him greatly in these duties. Certainly, these
22 are qualities that are needed to restore the trust and
23 confidence of the people of California in the office of the
24 Insurance Commissioner.

25 I think the Governor has made, and could not have
26 made a wiser or more appropriate choice, and I certainly urge
27 you to recommend his confirmation, because I believe he will be
28 a great Commissioner for the State of California.

1 Thank you very much.

2 JUSTICE LOW: Judge James Duvaras.

3 JUDGE DUVARAS: Good afternoon. How are you,
4 John?

5 CHAIRMAN BURTON: Good, Jim. Goes back with
6 Phillip, a long time.

7 JUDGE DUVARAS: My name is James Duvaras, Jr.
8 I'm a retired Judge of the Superior Court from Santa Clara
9 County.

10 I'm very pleased and honored to have this
11 opportunity to speak on behalf of Justice Low's confirmation to
12 the Governor's appointment as Insurance Commissioner.

13 I first met Justice Low in 1976, when we were
14 elected as Members of the Board of Directors California Judges
15 Association. We served together for three years, with Justice
16 Low being elected President of the Association in the last
17 year. And since completing our terms as Board Members, we have
18 served together on a number of Association committees, and
19 served as faculty and staff members of the Judges College.

20 In recent years, we have both been panelists with
21 the JAMS/ENDISPUTE organization as arbitrators, mediators, and
22 special masters.

23 Having worked with Justice Low all these years, I
24 have become very impressed with his character, his honesty, his
25 intellect, his legal expertise, and his administrative
26 abilities. His many accomplishments are due to his efforts
27 both as a jurist and also as a person who gives of his time and
28 effort to the community and community improvements.

1 In this day and age when serious concerns arise
2 about the integrity of those who hold public office, it is very
3 satisfying and encouraging to see that Governor Davis appoints
4 an individual of Justice Low's caliber. The availability of an
5 individual of Justice Low's stature should be very gratifying to
6 the public.

7 If I were a practicing lawyer today, or a
8 litigant in a lawsuit, I would not hesitate for a moment in
9 choosing Justice Low to resolve the dispute by a settlement
10 procedure, or by rendering a decision, as he is a man who is
11 impartial, not only that, but fair, and sees through to the
12 heart of a matter.

13 In closing, I respectfully request that you
14 confirm Governor Davis' excellent choice of Justice Low as the
15 Insurance Commissioner.

16 Thank you very much.

17 CHAIRMAN BURTON: Thank you, Judge.

18 Witnesses in support. Mr. Foran.

19 SENATOR FORAN: I'd move his nomination, if I
20 could.

21 CHAIRMAN BURTON: Well, why don't you just walk
22 up and do so.

23 SENATOR FORAN: Thank you.

24 CHAIRMAN BURTON: Deputy AGs stick together.

25 SENATOR FORAN: That's right.

26 My knowledge of Harry Low goes back to the
27 Attorney General's Office. We served in 1959-1960. And then I
28 worked with him many, many years.

1 I think he's a very well-qualified individual,
2 and I hope that I confirm him.

3 Thank you.

4 CHAIRMAN BURTON: Do you have family here you
5 want to introduce, Judge?

6 JUSTICE LOW: I have my daughter-in-law, my two
7 granddaughters, some in-laws.

8 Unfortunately, my wife couldn't be here to check
9 on your chopstick skills.

10 [Laughter.]

11 CHAIRMAN BURTON: I still do it.

12 SENATOR HUGHES: I'd like to move the nomination.

13 CHAIRMAN BURTON: Any witnesses in opposition?

14 Hearing none, it's been moved by Senator Hughes.

15 Secretary, call the roll.

16 SECRETARY WEBB: Senator Hughes.

17 SENATOR HUGHES: Aye.

18 SECRETARY WEBB: Hughes Aye. Senator Knight.

19 SENATOR KNIGHT: Aye.

20 SECRETARY WEBB: Knight Aye.

21 SECRETARY WEBB: Senator O'Connell.

22 SENATOR O'CONNELL: Aye.

23 SECRETARY WEBB: O'Connell Aye. Senator Burton.

24 CHAIRMAN BURTON: Aye.

25 SECRETARY WEBB: Burton Aye. Four to zero.

26 CHAIRMAN BURTON: Senator Lewis assured me, had
27 he been here, that he would be supportive, so congratulations,
28 Harry.

1 JUSTICE LOW: Thank you very much. Thank you
2 all.

3 [Thereupon this portion of the
4 Senate Rules Committee hearing was
5 terminated at approximately 4:50 P.M.]

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27 Evelyn J. Mizak
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APPEARANCESMEMBERS PRESENT

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3 SENATOR JOHN BURTON, Chair
4 SENATOR ROSS JOHNSON, Vice Chair
5 SENATOR TERESA HUGHES
6 SENATOR WILLIAM KNIGHT
7 SENATOR JACK O'CONNELL

STAFF PRESENT

8
9 GREG SCHMIDT, Executive Officer
10 PAT WEBB, Committee Secretary
11 NETTIE SABELHAUS, Consultant on Governor's Appointments
12 SUSIE SWATT, Consultant to SENATOR JOHNSON
13 CHRIS BURNS, Consultant to SENATOR KNIGHT
14

ALSO PRESENT

15 ALFRED R. ANGELE, Member
16 Board of Prison Terms
17 DAVE HEPBURN, Chair
18 Board of Prison Terms
19 WILLIAM HEMBY
20 California Coalition of Police and Sheriffs
21 NANCY MCGILL
22 DON NOVEY, President
23 California Coalition of Law Enforcement Associations
24 ALBERT E. LeBAS
25 California Peace Officers Memorial Foundation
26 SHARON L. LAWIN, Member
27 Board of Prison Terms
28

1 JAMES E. VOGTS, Legislative Liaison
2 Los Angeles County Professional Peace Officers Association
3 Santa Ana Police Officers Association
4 Association of Orange County Deputy Sheriffs
5 Long Beach Police Officers Association
6 Southern California Alliance of Law Enforcement
7 International Union of Police Associations
8 California Correctional Peace Officers Association
9 California Coalition of Law Enforcement Associations

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TIM YARYAN
Los Angeles Police Protective League
Association for Los Angeles Deputy Sheriffs
Los Angeles Probation Union, AFSCME Local 685

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ALFRED R. ANGELE, Member

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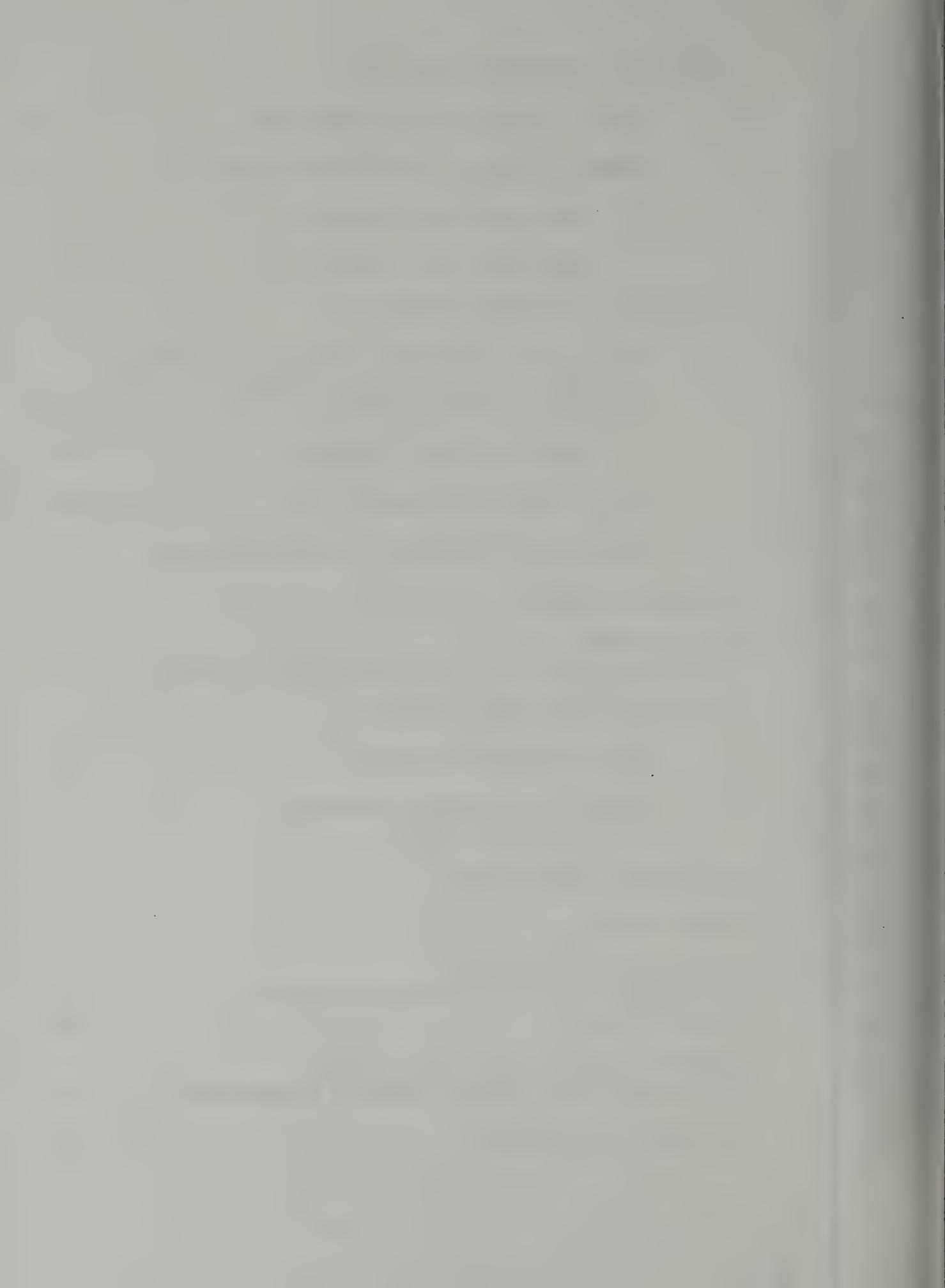
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN BURTON: Governor's appointees today,
Member of the Board of Prison Terms, Al Angele.

MR. ANGELE: Good afternoon, sir.

CHAIRMAN BURTON: Good afternoon.

MR. ANGELE: Senator Burton, Members of the
Senate Rules Committee, I come before you seeking your
consideration for confirmation of my appointment to the Board of
Prison Terms.

Before I speak to the issues that we are here
for, I feel compelled to inform you that there might be members
of the law enforcement community intending to testify against my
confirmation. I bring this to your attention only because of
the exaggerations and falsehoods contained in the letter that
was recently delivered to you or to this Committee.

I have submitted a letter referring to that
particular letter, along with documents that refute some of
those statements. I am at your disposal to answer any and all
questions you have regarding any issue you deem appropriate to
explore.

However, I have issues of a more significant
nature to discuss with you this afternoon, issues related to the
Board of Prison Terms. Governor Davis appointed me to the Board
of Prison Terms on December 29th, 1999. Since that time I have
participated in nearly 700 parole consideration hearings for
life prisoners. I performed those duties in a professional,
unbiased manner and asked to be judged on my performance.

1 Thank you.

2 CHAIRMAN BURTON: You've served almost a year;
3 right?

4 MR. ANGELE: Yes, that's correct, sir.

5 CHAIRMAN BURTON: What type of internal changes
6 or changes in the internal operation do you think would be
7 advantageous to improving the process?

8 MR. ANGELE: I think the ones basically that are
9 being conducted right now, there are a number of issues that we
10 need to speak about. One is the recording issue, obviously.
11 We have taken steps to research and develop a new system. Parts
12 of that system have been delivered. We're waiting for the third
13 portion of it --

14 CHAIRMAN BURTON: It has been delivered?

15 MR. ANGELE: That is correct, to our office, the
16 Board of Prison Terms. We're waiting for the third element,
17 which is the cabling. Once that cabling has been delivered, we
18 will then transmit the first operating units to the prisons that
19 are going to be first on the list of hearings.

20 CHAIRMAN BURTON: How long have we been trying to
21 get them to do that, Nettie?

22 MS. SABELHAUS: Since last spring, March or
23 April.

24 CHAIRMAN BURTON: So, they've got the material;
25 they haven't got it hooked up yet?

26 MR. ANGELE: That's correct. One of the problems
27 was that all -- that the three particular components had to be
28 ordered from three separate vendors. And as a result --

CHAIRMAN BURTON: Why? I guess you don't know.

MR. ANGELE: I don't know.

CHAIRMAN BURTON: Didn't we want somebody here from the Board of Prison Terms?

MR. HEPBURN: Senator, I'm trying to get this done. I'm as frustrated as anybody in trying to move up the process.

CHAIRMAN BURTON: You're talking about recording stuff; right?

MR. HEPBURN: I'm sorry, I meant to identify myself. Dave Hepburn, Chairman, Board of Prison Terms.

CHAIRMAN BURTON: You're talking about recording stuff; right?

MR. HEPBURN: We are.

CHAIRMAN BURTON: What's so God damn complicated?

MR. HEPBURN: It's not complicated. We tested a number of combinations of equipment. When we decided which set of combinations we wanted to get, we ordered the equipment. It has come in, as indicated by Commissioner Angele. We've got the recorders; we've got the microphones. We need the cables, which came from another vendor.

And as soon as they come in, they'll be rolled out to the first institution. And they should be in any time, and we'll get them in the institution the week after we receive them at the Board.

CHAIRMAN BURTON: There isn't somebody that could go and buy these things? You needed somebody to sell you one part, some another part, and some a part of cable?

1 MR. HEPBURN: Apparently we did.

2 CHAIRMAN BURTON: Who did the purchasing on that?

3 MR. HEPBURN: Somebody in our administrative
4 section.

5 CHAIRMAN BURTON: I'd like them to explain why.
6 You don't have to do it right now, but just kind of let us
7 know.

8 It would seem to me, in this modern day, that you
9 could say, "We want to record hearings, and we want to buy
10 something that does it." And people say, "Yeah, that's what we
11 do for a living, here it is."

12 MR. HEPBURN: We wanted to get the optimal set of
13 equipment. We tested a variety of combinations of equipment,
14 and this is what we came up with. I'd like to have gotten it
15 done sooner, and we are working on it.

16 CHAIRMAN BURTON: Thank you very much,
17 Mr. Chairman.

18 Back on internal improvements or changes.

19 MR. ANGELE: Changes that we also are very
20 obviously involved in now are the battered women's syndrome
21 problem. There's been a number of investigations that have
22 been completed, by the way.

23 CHAIRMAN BURTON: We can't hear you. Move the
24 microphone closer to you.

25 MR. ANGELE: As I was saying, the battered
26 women's syndrome problem, there were 31 cases that had been
27 outstanding. They have now been investigated, and they're
28 waiting now to complete the full investigation on those issues.

CHAIRMAN BURTON: They're being investigated and you're waiting for --

MR. ANGELE: They were investigated because they were pre-BWIs, so they had been -- the face-to-face meetings have been conducted with, I believe, 28 of 31 individuals. And now they're trying to set up dates for the actual investigations.

CHAIRMAN BURTON: Set up the dates of what?

MR. ANGELE: For the actual investigations. There are seven investigators in the Investigative Unit. Three of them are now working on death row issues, so there are four investigators to handle these 31 cases. So, they are scheduling their investigations now.

CHAIRMAN BURTON: They have met with inmates.

MR. ANGELE: Yes, face-to-face.

CHAIRMAN BURTON: And then they get that, and then they go out and check --

MR. ANGELE: That is correct; yes.

CHAIRMAN BURTON: -- something else.

MR. ANGELE: That is correct.

CHAIRMAN BURTON: When you, as a Commissioner, ask for information from whomever you would ask for in the department, are they forthcoming with information that you need or asked for?

MR. ANGELE: I think it depends on what the issues are. Some issues are forthcoming immediately; some take -- tend to take research. That may take a while, so we don't get it right away.

1 CHAIRMAN BURTON: Do you have any idea, there's
2 supposed to be an overhaul of the regulations, when that's
3 supposed to be coming up?

4 MR. ANGELE: I did discuss that this morning, and
5 we don't have a date. Obviously I don't have a date, but they
6 are being worked on presently.

7 CHAIRMAN BURTON: Mr. Chairman, do you have any
8 idea?

9 MR. HEPBURN: Senator, it's my intention to
10 develop some working committees in the beginning of next year,
11 in January. I view that as a long term project.

12 CHAIRMAN BURTON: How about a short term project
13 to correct some of the problems that you have with your regs?
14 It takes us six months to get a letter answered. God knows how
15 long it'll take you to overhaul your regs.

16 MR. HEPBURN: There are some changes we've made
17 to our regulations recently at our board meeting in October.
18 One dealt with battered women's syndrome issues, and another
19 dealt with regulation regarding first degree murder. Those are
20 currently in the process of being approved.

21 CHAIRMAN BURTON: You may as well sit there.
22 How long do you have to prepare for a hearing
23 when you get the binders, so to speak, like we have here? How
24 far in advance?

25 MR. ANGELE: Under our new procedure, we're given
26 the hearing packets for the first two days, and they're mailed
27 at our homes the Thursday prior to the week. That gives us the
28 weekend to at least develop our strategies on the first let's

say nine cases.

The first day at the facility, we then take the cases of the third and fourth and fifth days home with us, or over to the hotels with us, and we research them there.

It does give us adequate time since the new implementing of the sending of the documents to our homes, so we do have time to prepare.

CHAIRMAN BURTON: They used to be given to you as you walked in?

MR. ANGELE: That's correct. The first day it'd be there as we walked in, and we would then take the second day's home, and the third day's home on the second day, and so on and so on.

CHAIRMAN BURTON: Sometimes you have two commissioners at a hearing?

MR. ANGELE: We have two commissioners and one deputy commissioner.

CHAIRMAN BURTON: So, say you get the book, and say you're the Chairman. Do the commissioners, when you get the things, do you discuss the case with each other maybe prior to the person talking?

MR. ANGELE: No, there's not much discussion prior to. The format is basically into three separate parts. The presiding commissioner works on the crime itself and works on any sort of prior criminal activity and personal history, and then there are the post-conviction factors, such as the programming since the inmate was incarcerated. Then the third portion has to do with any letters of support or any letters of

1 opposition, along with another issue.

2 But depending upon how much -- what the volume is
3 contained in the case, we do have discussions afterwards,
4 obviously, when we make our decision. But there's not much
5 prior to. We may discuss parts of the case.

6 CHAIRMAN BURTON: I mean, it's more of a human
7 question.

8 MR. ANGELE: Yeah, that way, but there's no
9 decision made, obviously, until the hearing is over and we make
10 our decision.

11 CHAIRMAN BURTON: How much is there to discuss
12 about the crime? Isn't that like on a piece of paper, what they
13 did?

14 MR. ANGELE: It's all written down. We obviously
15 want to get into maybe the mind set, or some of the aspects of
16 the crime that are not contained in the particular report that's
17 in front of us.

18 CHAIRMAN BURTON: You're starting training on the
19 battered women's syndrome; right?

20 MR. HEPBURN: We have done continuous training
21 for a number of years, and yes, we are continuing it.

22 CHAIRMAN BURTON: You did a lot of training, but
23 didn't pay any attention to it, or what?

24 MR. HEPBURN: I believe we did pay attention to
25 it, Senator.

26 CHAIRMAN BURTON: You didn't find anybody that
27 suffered from it?

28 MR. HEPBURN: Actually there have been cases in

1 which parole has been granted regarding battered women's
2 syndrome cases.

3 CHAIRMAN BURTON: Senator Knight. Senator Hughes.

4 SENATOR HUGHES: Just one short question.

5 I'm asking this of either one of you, or both of
6 you, if you would like to answer.

7 What's the cause of the high rate of recidivism
8 of our parolees? And what plans do you as commissioner, you as
9 a director, have on changing the tide that we see now on
0 recidivism?

1 MR. ANGELE: Are you specially talking about life
2 prisoners.

3 SENATOR HUGHES: I mean in general, in general.

4 MR. HEPBURN: I should say that the
5 commissioners, of course, only do hearings on life term
6 prisoners, and the recidivism rate on life term prisoners is
7 relatively low compared to the general population of parolees.

8 And the programs are administered by the
9 Department of Corrections, and there are a lot of support
0 programs out in the community. But the Board does not control
1 those programs; the Department of Corrections does.

2 SENATOR HUGHES: But what I asked you is, what do
3 you believe is the cause of the high rate of recidivism in our
4 parolees? And what would you recommend from your point of view
5 how to deal with it?

6 You can make recommendations even though you may
7 not be the one responsible for it. You have the greatest
8 insight, I believe, or maybe you don't, so correct me if I'm

1 wrong.

2 MR. HEPBURN: Well, to be honest with you,
3 because that hasn't fallen within the purview of the Board, I
4 haven't given it probably sufficient thought to answer your
5 question adequately.

6 SENATOR HUGHES: Do you think you should be
7 making any recommendations? If not, why not?

8 MR. HEPBURN: Well, we do make recommendations
9 regarding parole conditions. And the reason why we put those
10 conditions in there is to, hopefully, minimize recidivism and to
11 increase the amount of supervision that parolees have once
12 they've been released from the institution.

13 We recommend in specific cases that they
14 participate in some of these programs that are sponsored by
15 CDC -- counselling programs, alcohol treatment programs -- so
16 that when they do get released, they have a support system
17 outside the institution, and hopefully, we can minimize the
18 number of cases where they end up back in the institution on a
19 parole revocation.

20 SENATOR HUGHES: Do you think it would be helpful
21 for you to make the kind of statement to the other divisions of
22 Correction like you just made to me, because sometimes one
23 member of the family doesn't speak to the other member of
24 family, and consequently, nothing can get done when you're not
25 totally involved with one segment of the Corrections system.
26 You could make recommendations to another segment to help them,
27 especially with the recidivism.

28 MR. HEPBURN: Yes, I agree with that statement,

1 and we do. We do work fairly closely with the Parole and
2 Community Services Division of the Department of Corrections on
3 those issues. We have regular meetings with them. And
4 certainly, we have a significant input in the parole conditions
5 when somebody gets released from prison.

6 SENATOR HUGHES: And the cause for this is what,
7 in your estimation? And can this cause be rectified? Yes or
8 no?

9 MR. HEPBURN: I don't think I have a good answer
10 to that question.

11 SENATOR HUGHES: But you have some thoughts, and
12 sharing your thoughts, I think, would be helpful; right?

13 MR. HEPBURN: Yes, I do. And as I indicated, I
14 think the support system outside the institution is important.
15 I think the programs for support, counselling programs,
16 supervision while on parole, the close supervision that is
17 provided by the Parole Division, all of those are important
18 factors in reducing recidivism.

19 SENATOR HUGHES: Mr. Commissioner, do you agree
20 or disagree?

21 MR. ANGELE: Yes, I do. And I also want to
22 indicate that possible cause may be the issuing of parole date,
23 or I should say paroling individuals back into the climates from
24 which they came from. The law now states that the inmates shall
25 be paroled to the county of last residence at the time of the
26 offense. Paroling an inmate back to an area from whence he
27 came, where he was involved in either gang activity or illegal
28 activity, that may be obviously setting him into a position of

1 recidivism. So, there might be something in terms of that area.

2 SENATOR HUGHES: Thank you very much.

3 CHAIRMAN BURTON: Senator O'Connell.

4 SENATOR O'CONNELL: I'm fine, Mr. Chairman.

5 CHAIRMAN BURTON: In several states the prisoner
6 is given the opportunity to respond to information presented at
7 the parole hearings from the DAs, victims, or their
8 representatives, and the Youthful Parole Board does the same
9 thing.

10 Do you think that type of process would be
11 equitable to allow the inmate to respond to statements that are
12 made?

13 MR. ANGELE: I would personally have no objection
14 to investigating that particular system. However, we do have
15 the latitude presently of asking the inmate to respond if the
16 statements made by the victims or the victim's next of kin bring
17 up issues are that were not on the table, and we've done that.

18 CHAIRMAN BURTON: How often is that done.

19 MR. ANGELE: I would think from my experience ten
20 percent of the time.

21 CHAIRMAN BURTON: What's wrong with doing that?

22 MR. HEPBURN: Well, we have the latitude to do
23 it.

24 CHAIRMAN BURTON: I know that, and you don't do
25 it. So what's wrong with doing it? You have latitude to do a
26 lot of stuff that you don't do.

27 MR. HEPBURN: Well, the purpose of the victim
28 next of kin being there, of course, is to just make comments

1 about their view of the crime and the inmate who committed the
2 crime.

3 CHAIRMAN BURTON: Right.

4 MR. HEPBURN: And it's not to be there to testify
5 to the facts of the case.

6 CHAIRMAN BURTON: Right, and what's wrong with
7 being able to respond to that or what the DAs say.

8 If you allow them to do it ten percent of the
9 time, what's wrong with allowing them to do it in every matter?

10 MR. HEPBURN: Well, it would create a situation
11 where there's more of -- more of an adversarial nature, I think,
12 than there needs to be at that stage in the proceeding.

13 CHAIRMAN BURTON: How?

14 MR. HEPBURN: Because there would be an
15 opportunity for debate back and forth over what the victim said.

16 CHAIRMAN BURTON: No. You just said that you do
17 it. You just don't do it all the time. So, it's like being a
18 little bit pregnant. It's all right for somebody to be
19 adversarial and not somebody else? There's no logic.

20 MR. HEPBURN: We have a general practice of
21 having the victim's next of kin making their statement at the
22 conclusion of the hearing.

23 CHAIRMAN BURTON: And I think that's fine to tell
24 you what a loss it's been, et cetera, et cetera, et cetera, and
25 what a bad person the prisoner is, or the DAs may say something.

26 But I don't see anything wrong with, as long as
27 you've got the gavel, allowing the person to make some kind of
28 response to these comments.

1 MR. HEPBURN: We don't allow debate back and
2 forth on anybody's closing statement.

3 CHAIRMAN BURTON: We're not talking about debate.
4 The commissioner here said about ten percent of the time, so ten
5 percent of the time it's happening, and we aren't talking about
6 debate. We aren't talking about who shot John, if you'll pardon
7 the pun.

8 We've gone through this, and you've never given a
9 real answer that makes any sense, except you don't want to do
10 it.

11 MR. HEPBURN: Well, we don't want to set up a
12 situation where there's argument about the closing statements
13 made by individuals at the conclusion of the hearing. We've got
14 a district attorney who makes a statement.

15 CHAIRMAN BURTON: Yes.

16 MR. HEPBURN: Once he's done --

17 CHAIRMAN BURTON: And I can't say, "The district
18 attorney, in fact, if you look at page 17 in your book there,
19 you'll find out what he's saying is inaccurate and that's not
20 what happened?"

21 MR. HEPBURN: No, they can say that.

22 CHAIRMAN BURTON: You just said they can't. You
23 just said they can't respond.

24 MR. HEPBURN: No, I was giving you the order that
25 they make the closing statements at the conclusion of a hearing.

26 The inmate's attorney goes after the DA, so they
27 have an opportunity to make a statement at that point. The DA
28 doesn't get to rebut what they said.

1 CHAIRMAN BURTON: How about after, say, the
2 family?

3 They do it at the Youthful Offender Board. I'm
4 just missing why it works there, why it works in other states,
5 and why you seem so hell-bent on not doing it here, that's all.

6 I'm just missing the point, which probably should
7 be better handled not at this hearing but at your budget
8 hearing, which I think is a good place to handle the Board of
9 Prison Terms. It's going to be at the budget hearing. We
10 didn't really bring you here to do this, and I apologize for
11 that. But we'll have those questions at the hearing on your
12 budget. I apologize for getting on that issue here.

13 But we have never gotten a satisfactory answer,
14 except we really don't want to do it, which to me is not
15 necessarily a good answer.

16 Witnesses in support.

17 Thanks, and we won't bother you any more,
18 Mr. Chairman.

19 MR. HEMBY: Mr. Chairman, Bill Hemby,
20 representing the California Organization of Police and Sheriffs.

21 My organization offers its support to the
22 confirmation of Mr. Al Angele for this position.

23 As a personal note, I've known Mr. Angele for
24 some 18 years, and I have found him to be a person of great
25 moral integrity, sound judgment, and fairness. I think he'd
26 bring a lot of good aspects to the Board of Prison Terms and
27 suggest that he -- or ask that he be confirmed.

28 Thank you.

1 CHAIRMAN BURTON: Other witnesses in support.

2 Senator Polanco has sent communication that he's
3 in support of Mr. Angele and Ms. Lawin. We have the National
4 Latino Peace Officers Association and the Orange County
5 Sheriff-Coroner.

6 I'd like to ask you a question about the decision
7 review process. How does that work?

8 MR. ANGELE: Decision review basically goes over
9 the decision made by the hearing panel to ensure that everything
10 is done correctly, and that no issues of law have been missed.
11 It ensures that the decision itself is based upon fact and law.

12 CHAIRMAN BURTON: How can they review if it's
13 based on fact? You were, if you will, the triers of fact.
14 You're there listening to the person, listening to the victims,
15 listening to the DA. How are they going to --

16 MR. ANGELE: They go over the transcript for
17 mistakes and errors, and correct any errors that there may be.

18 Once again, there's more to the fact of law that
19 they're concerned with.

20 CHAIRMAN BURTON: What's the fact of law? You
21 guys have almost plenipotentiary -- I mean, you've got the
22 ability to set a date or not. When would you be going beyond
23 the law in setting a date?

24 MR. ANGELE: There could have been some
25 procedural errors made.

26 CHAIRMAN BURTON: Like what?

27 MR. ANGELE: Well, it depends on the particular
28 case. An example could be if we did set a date, that we may not

1 have set the -- picked the correct matrix.

2 CHAIRMAN BURTON: You may not have what?

3 MR. ANGELE: Selected the correct matrix in
4 giving the estimated date of release. So, they go over that
5 also.

6 CHAIRMAN BURTON: They go over that also, and if
7 you said January 1st, 2001, and according to the matrix it
8 should have been January 1st, 2002, do they just deny the date,
9 or do they just go back and say, you know, you set a date but
10 you set the wrong date and it's got to be 2002?

11 MR. ANGELE: It's just corrected.

12 CHAIRMAN BURTON: How do they overrule the
13 findings?

14 MR. ANGELE: Well, if findings are based upon the
15 facts within the transcript, and they don't agree with our
16 findings, what they're stating is that we may have not looked at
17 all the issues.

18 CHAIRMAN BURTON: How the hell do they know?
19 They weren't even there.

20 MR. ANGELE: That's true; that's true.

21 CHAIRMAN BURTON: Witnesses in opposition.

22 MS. MCGILL: Senator Burton and Members of the
23 Senate Rules Committee, my name is Nancy McGill. I am a native
24 Californian who has worked as an operating room nurse and
25 resided in Sacramento County for the past 27 years.

26 While I do not condone blanket parole, and I'm
27 anxious about public safety, I am here to testify because I am
28 gravely concerned about the lifer parole process with respect to

1 due process, equal protection under the law, ex post facto
2 clauses, and violation of the Eighth Amendment's cruel and
3 unusual punishment clause.

4 In quoting from the Capitol Alert, 8/11/2000, it
5 states, "Davis has loaded the state parole board with
6 conservative Republicans and ex-cops, and it's denied all but a
7 handful of parole petitions. The very few that made it to
8 Davis were either returned for a review and rejection or denied
9 outright by the governor, making good on his no parole pledge
10 uttered during a 1999 newspaper interview, 'If you take
11 someone's life, forget it.'"

12 With such views in public circulation,
13 Mr. Angele and all the other board members ought to be
14 scrutinizing their decisions to reassure everyone that they are
15 participating in some kind of -- not participating in some kind
16 of charade to merely comply with the Governor's desires.

17 The Board of Prison Terms has become a critical
18 self-empowered body with a standard of being above the law. In
19 testifying today, I take this opportunity to express my findings
20 and conclusions based on the research I have conducted.
21 Evidence continues to accumulate showing that the Board's
22 process is not fair, and individual hearings display incidences
23 that signal its unfairness to any reasonable person. My
24 information about certain hearings conducted by Mr. Angele show
25 is that he is part of the problem, not the solution.

26 Mr. Angele has a law enforcement affiliation, as
27 do the majority of the other BPT members, and he is from the
28 L.A. area. His position on the Board detracts from the required

1 diversity of experience and viewpoint.

2 It has long been recognized that a parole board
3 should include well qualified people with experience in the
4 fields of psychology, education, business, and human resources.
5 It should also have a balance of race, gender, and place of
6 residence that reflects that of the state as whole. Therefore,
7 this position does not reflect a cross section of society as
8 stated in PC 5075 and is in violation of the law and good
9 practice. A similarly composed jury in a criminal court would
10 be grounds for a mistrial.

11 However, the Governor has stated that his
12 judicial appointments should follow his political lead. My
13 appointees should reflect my views. They are not there to be
14 independent agents. They are there to reflect the sentiments
15 expressed during the campaign. Obviously, the Governor feels
16 the same way about his commissioners.

17 While I realize the Governor appoints the
18 commissioners, it is the responsibility of this Committee and
19 the entire Senate to act as the check and balance portion of the
20 system to ensure due process and fairness. Therefore, the
21 Senate Rules Committee and the Senate have the power to send a
22 clear message back to the Governor that he is not abiding by the
23 law through their appointment denial. Continuing to disregard
24 5075 makes you just as culpable as the Governor.

25 It has come to my attention that the courts in
26 Marin and San Luis Obispo Counties have instructed the Board
27 that parole hearings must be heard. With a functioning Board of
28 only five members, this requires the postponement of hearings in

1 other counties. Therefore, there is no uniformity, and the
2 inmates in these counties are being denied equal protection
3 under the law. Although the law does not specify a commitment
4 to a particular timeframe, five years can't be exceeded. Thus,
5 the hearing date is totally arbitrary.

6 While it might be a strategy of Governor Davis
7 not to appoint commissioners in order to reduce litigation and
8 public scrutiny, the tactic remains unlawful. He should abide
9 by 5075 and not hold deserving inmates as prisoners of politics.

10 I readily admit that the overall conduct of the
11 Board has improved from the Nielsen panel, but the behavior
12 patterns remain inherently the same as those of past panels.
13 There has merely been a shift in the denial focus due to
14 legislative, judicial, and public scrutiny.

15 In reviewing the 1999 Executive Report on Parole
16 Review Decisions, I noted that inmates were given dates who had
17 negative psych reports, a history of drug abuse, misconduct in
18 prison, no employment plans, gang membership, and a previous
19 criminal record. Yet to paraphrase Chairman Hepburn at his
20 confirmation hearing on August 7th, he stated that an inmate is
21 more likely to be found suitable for parole with no criminal
22 history, disciplinary free behavior, self-help in the form of
23 educational and/or vocational training, and positive
24 programming.

25 In the light of the Executive Report and
26 Mr. Hepburn's testimony, one quickly finds themselves asking why
27 these particular inmates were given dates in the first place.
28 There are many inmates who have no previous criminal record, are

1 disciplinary free, have been employed during incarceration, have
2 attended all the self-help classes available, have a positive
3 psych report, and have parole plans including a job and
4 residence. Why haven't they been given a date? One might
5 conclude that those inmates were given dates simply because the
6 Governor could declare them improvidently granted more easily.

7 It is no wonder that many inmates and some
8 attorneys are telling me they think that rather than listening
9 to the inmate and considering the facts in the file, the panel's
10 decision to deny parole is still predetermined. This certainly
11 seems quite plausible when one considers the behavior patterns
12 of the Board. Nearly all prisoners continue to be denied parole
13 dates regardless of their suitability, and phony reasons are
14 given for the denials. The March 1999 Declaration of Albert
15 Leddy confirmed this suspicion.

16 It is obvious that the composition of the panel
17 is different from the '99 commissioners. However, deserving
18 lifers are still being denied parole, regardless of their
19 accomplishments.

20 Parole is written into the law and has served
21 over the years as an incentive for rehabilitating prisoners and
22 making them productive members of society. It is still serious
23 when the words in the law lose their meaning. The crime is
24 being utilized as the excuse for denial, in addition to
25 inadequate therapy and no vocational training. And the DA
26 usually opposes parole. Since the DA is an elected position, it
27 seems quite obvious that parole would be opposed. The matter
28 becomes laughable when one recognizes their opposition speech is

1 canned.

2 Why does an inmate become more or less suitable
3 for parole based on the composition or the political agenda of
4 the panel? It is noted that the phrase, "unpredictable degree
5 of threat" is being utilized as the general term in counselor
6 evaluations. An attorney spoke with several counselors and
7 staff members regarding this statement and was told that
8 conscious decision had been made to use it in the reports to
9 reduce liability. In other words, you can never really predict
10 anyone's behavior relative to future conduct. So, this is a
11 procedural distinction from earlier reporting policies and
12 should not be interpreted by the Board as a behavioral change by
13 the inmate.

14 Now, you're probably asking what this has to do
15 with Mr. Angele. He has only served on the Board about a year.

16 The point I am attempting to make is that the
17 situation is status quo. Chairman Hepburn not brought a fresh
18 attitude to the job. Nothing has changed from '99, with the
19 exception that dates are now being given to kidnappers and a few
20 murderers. But, of course, the Governor can only take a date
21 from a murderer.

22 I am not a rocket scientist, but it appears quite
23 evident from the information I have received that there is a
24 pattern of behavior indicating that the Board is merely a puppet
25 of the Governor.

26 Title 15, Division 2, Chapter 2, Article 2, No.
27 2120 states, "good time and work time credit shall be deducted
28 from the DSL release date." An inmate's minimum eligible parole

1 date, MEPD, is calculated 85 percent of the sentence, at which
2 time the parole hearings commence. Good time is calculated at
3 the time a release date is given. It is easy to see that if the
4 Board granted four months good time for every year served,
5 serving 17 years, or 204 months, would amount to 22 years, 8
6 months, which is outside the maximum matrix guidelines of the
7 Judicial Council.

8 There may be cases where longer terms are
9 indicated, but these have to be justified. This has not been
10 the case. It is important to remember that the burden of proof
11 for extending a term is upon the state, not the inmate.

12 It is common knowledge among the legal
13 professionals and the Board that the Board has an unwritten
14 policy of not considering inmates for parole unless the minimum
15 court-dictated calendar time has been served: 15 to life for
16 second degree, and 25 to life for first degree. Thus, there is
17 no consideration given to good time, and all the hearings prior
18 to the calendar years are unquestionably procedural.

19 Why on earth are the taxpayers paying \$95,000 a
20 year plus per diem, expenses and benefits for a commissioner to
21 sit on a panel that has absolutely no intention of paroling the
22 inmate until he's physically served the calendar time imposed by
23 the court? This is a waste of tax dollars.

24 It seems to me that the Board needs to either
25 obey the law, or the laws need to be written. An underground
26 policy is not acceptable.

27 Because prisoners facing a parole hearing tend to
28 be hopeful, and because the law says the panel should give them

1 a parole date if they are suitable for parole, most enter the
2 hearing room with an expectation that a date might be granted,
3 or that some reasonable explanation will be given. But
4 information about Mr. Angele's demeanor, statements, and
5 decisions tell me that he lacks the ability and moral fiber to
6 follow the requirement of the law. So when Mr. Angele appears
7 rude, disinterested, bored, or makes derogatory remarks, the
8 inmates are offended. At the very least, the commissioner
9 should remain attentive.

10 There is no need to have a board that is so
11 flagrant in their application of law that the courts are
12 compelled to move in. I would like to point out that under
13 1170, the inmates are incarcerated for punishment not
14 rehabilitation.

15 Panel members are responsible for articulating
16 their reason in any denial of parole because the Board must show
17 facts that support any finding of unsuitability. Form 1000 does
18 not accomplish this goal. The burden of proof for suitability
19 is not that of the inmate who has reached the minimum eligible
20 parole date. The commissioners must be able to show they are
21 basing decisions solely on a prisoner's suitability for parole
22 and give them a chance to respond to any new evidence cited by
23 the Board as a reason to deny parole. This is almost laughable
24 because after 15 to 25 years, how could there possibly be any
25 more new evidence?

26 Victim testimony is taken as gospel without
27 investigation and becomes a matter of record. Subsequently, the
28 inmate is forced to deal with possible inaccurate information at

1 future hearings.

2 The conclusions have nothing to do with facts.
3 Therefore, it may be time for the Legislature to revisit the
4 entire question of victim involvement in parole hearings.

5 At this point, it should also be noted that
6 inaudibles and admissions in Board hearing transcripts continue
7 to be problematic.

8 If given a date, the inmate is reviewed by three
9 separate panels. The Board meets with the inmate, then later a
10 second BPT panel reviews the information.

11 I would also like to add that during the time
12 between the prison hearing and the other two reviews, it appears
13 that documentation is added to the file without the consent or
14 knowledge of the inmate or his attorney.

15 If an inmate is given a date, the file should be
16 seized immediately by an independent party, and every single
17 page copied and returned to CDC. Then, if the date is denied
18 either by the BPT or the governor, any additional information
19 added will be obvious.

20 In a court of law, we don't let jurors hustle
21 more information from outside the courtroom to help them make a
22 decision. Although a Board hearing is a quasi-judicial event,
23 the same rules should apply.

24 Finally, the Governor and his team of lawyers
25 review the information a third time.

26 At the recission hearing of three inmates granted
27 a parole date in '99, the DA and sheriff opposed parole based on
28 the violence and circumstances of the original crime, not on the

1 prisoner's present suitability for release. The Governor
2 concurred, and the date was denied. Yet, when sentencing the
3 inmate, the judge took into consideration the nature of the
4 crime. The crime will always remain constant.

5 CHAIRMAN BURTON: How much longer?

6 MS. MCGILL: [Shows pages left to be read] The
7 inmate can't change that factor. Does this mean there will be
8 more lawsuits and wasted tax dollars?

9 The BPT is an unfair panel. At the opening
10 session of the Democratic Convention in L.A., Davis spoke of
11 fairness and justice as hallmarks of his party. However, we are
12 not here to discuss the Governor nor the Board. We are here to
13 discuss the confirmation of Mr. Angele.

14 It has been my intent to point out to you that
15 the Board in general, and Mr. Angele specifically, are not fair
16 and impartial. Thus, Governor Davis' statement is nothing more
17 than political propaganda and a crock.

18 This information and similar opinions which seem
19 to indicate a pattern of behavior were received at my request.
20 Mr. Angele has wrongly explained that the Board does not grant
21 parole. He claims the Board only finds a prisoner suitable for
22 parole, and that granting parole is up to the Governor. That is
23 contrary to Penal Code 3040, which clearly states the function
24 of the Board is to grant parole.

25 So, how can Mr. Angele do his job if he doesn't
26 know what his job is? And how can the Board of Prison Terms
27 command the respect of prisoners when one of their commissioners
28 is so clearly mistaken.

1 Inmate Williams was told that he will never get
2 out of prison, and it doesn't matter what he does inside the
3 prison. They discussed the murder, his past history, and his
4 physical stature. What on earth does a man's size have to do
5 with his ability to stay sober, hold a job, be a good citizen,
6 and manage his anger? The inmate has absolutely no control over
7 the size of his hands or his height. Even though the inmate has
8 completed all the panel's recommendations, they continue to deny
9 parole based on the same factors, Form 1000.

10 Mr. Angele must know that it destroys hope to
11 tell an inmate who has completed all of the parole board's
12 recommendations that the panel's denying him a date based on his
13 appearance.

14 Commissioners have a responsibility to prison
15 staff as well as to inmates because a person who has been
16 unlawfully and unreasonably denied hope can become a dangerous
17 prisoner.

18 It is also interesting to note that the Board
19 makes recommendations for therapy that are nonexistent at a
20 prisoner's institution and even within the system. I am
21 referencing the Psychotherapy Memorandum of 08/13/99.
22 Psychotherapy may be provided to lifer inmates when mental
23 health professionals determine it is needed. The mental health
24 staff make the recommendation, not the Board of Prison Terms.
25 Psychotherapy is not provided within CDC to lifer inmates to
26 deal with their commitment offenses.

27 It would be most helpful if the panel was
28 required to be familiar with the programs and services that are

1 actually offered at any given prison, then tailor their
2 recommendations accordingly.

3 It's doesn't matter what the trial judge and jury
4 found. The prisoner's efforts at self-improvement? Never
5 enough. The psychologists' and counselors' reports?
6 Discounted. Other prison staff members' input doesn't count
7 unless it's negative. The sentencing matrix and suitability
8 guidelines? Ignored. An unbiased parole board? I don't think
9 so.

10 The rare Board decision of suitability for
11 parole? Overruled. If the Governor has stated that no murderer
12 will be paroled, and thus far he has lived up to his commitment
13 with the exception of one very safe battered female syndrome
14 case, why do we need a Board of Prison Terms to hear murderers?
15 This one release came only about because of growing pressure
16 from inmates, lawyers, certain lawmakers, judges, and editorial
17 writers. It was a safe political maneuver in an effort to prove
18 he reviews each case on individual merit, and a blanket policy
19 does not exist.

20 However, Governor Davis has taken it upon himself
21 to act as judge and jury, while overriding the court's decision
22 at the time of sentencing, so the BPT is strictly a procedural
23 board and a waste of tax dollars for a game of power and control
24 to enhance political gain for himself.

25 It is time the Senate Rules Committee and the
26 Senate utilized their power and discretion in the name of
27 justice and due process. Do not allow Davis to advance his
28 political career at the expense of human lives who are deserving

1 of parole.

2 So, I ask you to have the intestinal fortitude to
3 stand up to the Governor and Mr. Angele's unlawful behavior.
4 Please take back your power of providing checks and balances to
5 the system while protecting the right to due process and abiding
6 by the law without burdening the taxpayer.

7 Do not confirm the appointment of Commissioner
8 Angele. Thank you.

9 CHAIRMAN BURTON: Do you have another copy of
10 that?

11 MS. MCGILL: Yes, sir, I do.

12 CHAIRMAN BURTON: Other witnesses in opposition.

13 MR. NOVEY: Chairman Burton, Senators, just a
14 point of privilege here.

15 Ms. Hughes, thank you for your many years of
16 wisdom and thought in the Legislature. I hate to see you go.
17 We're still stuck with some of the old timers.

18 Good afternoon. My name is Donald Novey. I'm the
19 President of the California Coalition of Law Enforcement
20 Associations and sundry other groups.

21 This is probably the most difficult thing one has
22 to do, is to oppose a candidate for appointment in any
23 administration, and this is the fifth that I've had to deal
24 with.

25 Mr. Angele was probably a decent law enforcement
26 officer on the street. However, representing 31 groups, I think
27 one of the questions in the witness before the previous witness,
28 it came up to, where was Mr. Angele's support? And I think

1 everyone noticed that it was very diminimus. Even in Orange
2 County, the home of Senator Johnson, I didn't see the Orange
3 County Deputy Sheriffs; I didn't see Santa Ana; I didn't see
4 Anaheim.

5 There's probably some reasons for that. I think
6 there'll be people speaking after me that will bring that to
7 your attention. I want to keep this brief. I don't want to get
8 into personal assaults, and it's not what this is about.

9 This is about is this person qualified to serve
10 in this position? I say no on behalf of 100,000 peace officers
11 in the State of California.

12 There's been questions about the operations that
13 Mr. Angele was involved with in his previous organization, COPS.
14 And I think those have never be satisfactorily answered. I
15 think this Committee should thoroughly review those.

16 I don't have the answers myself. When I get law
17 enforcement agency after law enforcement agency asking me, why
18 is this person allowed to proceed to this position, and we've
19 not thoroughly investigated some of his supposed actions in this
20 other organization, and I'm not condemning Mr. Angele in what
21 he's done presently on the Board of Prison Terms, by the way,
22 but his past actions. I think they need to be answered.

23 Probably the most egregious, and I'll just speak
24 to that, was the soliciting of funds for supposed COPS
25 organizations on the street from minority communities. And the
26 upshot was the investigations, I think, went on in Orange
27 County, that Mr. Angele's former organization had supported an
28 element that if the monies weren't contributed, your 9-1-1 calls

1 would not be returned to your minority communities.

2 I think this is serious allegation. I've never
3 received real answer on it. Mr. Angele could probably put that
4 to bed today. I don't know. I've never talked to the gentleman
5 about it; he's never talked to me.

6 We invited Mr. Angele's organization to the
7 statewide law enforcement meeting this month. I had original
8 plans to be in Florida to enjoy a vacation in the warm sun down
9 there, and probably testify as an expert on riots.

10 I passed that over to attend this wonderful
11 hearing today, sir.

12 That, in essence, is my testimony. I don't want
13 anything else in reference to Mr. Angele, whether something to
14 do with tie tacks, or whatever, and a memorial commission,
15 because I don't have enough knowledge.

16 But I do know of this one incident, and it's been
17 something that's had deep negative palates of my peers in law
18 enforcement, and we don't have an answer. I think it's
19 incumbent upon the leadership of the people of California, the
20 State Senate, before the new one comes in next week.

21 Thank you.

22 CHAIRMAN BURTON: Thank you, Mr. Novey.

23 Witnesses in opposition?

24 MR. LeBAS: Mr. Chairman, Senators, my name
25 Albert E. LeBas. Last name is L-e capital B-a-s. I am
26 currently the Executive Director of the California Peace Officer
27 Memorial Foundation.

28 Mr. Novey pretty succinctly summed up the

1 the organization that Mr. Angele represented for about 25
2 years.

3 Without boring you further, the problems that we
4 have had over the years I distributed to the Senators, a
5 two-and-a-half page document. Rather than read that to you, or
6 if you'd rather, I can read it to you.

7 CHAIRMAN BURTON: No, thank you. I accept your
8 offer not to.

9 MR. LeBAS: Not to, very good. I thought you
10 might.

11 Our foundation, with a 25-member Board of
12 Directors, has membership representing well over 98 percent of
13 law enforcement people in the State of California, both
14 management and rank-and-file.

15 I can tell you without equivocation that they, to
16 a man and organization, oppose the appointment and confirmation
17 of Mr. Angele as a member of the Board of Prison Terms.

18 If there's any questions, I'd be happy to answer
19 them.

20 CHAIRMAN BURTON: I have none.

21 Other witnesses in opposition, please.

22 Would you like to respond to, I guess, the basic
23 comments of Mr. LeBas and Mr. Novey?

24 MR. ANGELE: Basically, I've never been asked to
25 attend any meetings in order to defend any of the allegations.

26 There was an incident. I believe they're talking
27 about the one in Orange County that had to do, in fact, with an
28 individual who was soliciting for three separate organizations

1 and making the inference that, and I think primarily in the
2 Hispanic neighborhood, that if you do not contribute, you, when
3 you call 9-1-1, nobody would answer.

4 I'm not convinced at this point because I have
5 not seen the arrest report. There was an arrest made. But
6 whether at the particular time they were soliciting for COPS or
7 another organization, like I say, there were three groups.

8 However, this much, just prior to my retirement,
9 and this occurred about nine years ago, was the first time I
10 was made aware of it. There was a reporter that came to my
11 office and brought it to our attention. And if this is the
12 case, it involved a gentleman by the name of Richard Levine.
13 And the only Richard Levine I had ever heard of was an attorney
14 that worked for a gentleman that I knew in Marina Del Rey.

15 This has not been brought to our attention
16 whatsoever. And I might add that we had later found out that
17 the individual was arrested in a sting operation, again, if this
18 is the individual they're talking about, that the promoter we
19 used assisted.

20 So, I mean, one of my problems obviously, is if
21 you don't create the dialogue among people, pick up a phone and
22 say, "Here's your problem. Let's talk about it," nothing gets
23 discussed, and it festers over years and years and years.

24 That is my explanation over the incident that
25 Mr. Novey talks about.

26 I'll answer any questions you have regarding any
27 of these issues. Like I say, if there's an opportunity to sit
28 and discuss these issues among these individuals who have -- who

1 want to bring them up, they're all explainable. That's all I can
2 say.

3 CHAIRMAN BURTON: Is the --

4 MR. ANGELE: I will add one other thing, that
5 during our tenure, as far as the solicitation, we have had
6 individuals fired and then arrested by initiating our own police
7 reports. There was a problem; we tried to get on top of it.
8 And I'm sure COPS is doing the same thing today.

9 CHAIRMAN BURTON: Questions? Move the
10 confirmation.

11 Secretary, call the roll.

12 SECRETARY WEBB: Senator Hughes.

13 SENATOR HUGHES: Aye.

14 SECRETARY WEBB: Hughes Aye. Senator Knight.
15 Senator O'Connell.

16 SENATOR O'CONNELL: Aye.

17 SECRETARY WEBB: O'Connell Aye. Senator Johnson.

18 SENATOR JOHNSON: No.

19 SECRETARY WEBB: Johnson No. Governor Burton.

20 CHAIRMAN BURTON: Aye.

21 SECRETARY WEBB: Burton Aye. Three to one.

22 CHAIRMAN BURTON: Congratulations.

23 MR. ANGELE: Thank you, sir.

24 CHAIRMAN BURTON: Sharon Lawin.

25 MS. LAWIN: Good afternoon, Senators. Thank you
26 for the opportunity to introduce myself.

27 Before coming to the Board of Prison Terms on
28 January 3rd of this year, I proudly served the members of the

1 Los Angeles County Professional Peace Officers Association for
2 nearly 25 years. As Executive Director of the organization, I
3 served -- which the organization has commonly been referred to
4 as PPOA. I was the chief spokesperson for negotiations,
5 covering wages, hours, and working conditions; responsible for
6 all business and administrative aspects of the organization,
7 including member representation. Served as liaison to state,
8 county, and local agencies, other public employee unions, as
9 well as peace officer groups.

10 I served as Vice President of the Los Angeles
11 County Federation of Labor, member of their COPE, or Political
12 Education Committee, and as a member of various committees
13 within the International AFL-CIO.

14 These duties are but a sampling of the functions
15 that I performed as Executive Director of PPOA, and I chose them
16 in the hopes of providing you with some idea of the background
17 that I bring to the Board of Prison Terms.

18 My experience and education affords me an unique
19 perspective. On the one hand, I have acquired a strong
20 sensitivity to the concerns of the law enforcement community
21 with respect to the criminal justice system.

22 On the other hand, a major portion of my duties
23 involved asserting the rights of individuals or their
24 representative employee organization, in challenges to actions
25 taken by public agencies.

26 Those activities most certainly have given me an
27 appreciation of the need to respect individual rights and the
28 administration of justice.

1 In summation, I bring to the Board of Prison
2 Terms nearly three decades of working with the laws, codes, and
3 regulations that govern interactions between people and
4 organizations. I bring to this position a high standard of
5 personal integrity and the tenacity to handle the
6 responsibilities of the position as commissioner in a fair and
7 conscientious manner.

8 I look forward to being found suitable for
9 confirmation as a commissioner on the Board of Prison
10 Terms.

11 Thank you.

12 CHAIRMAN BURTON: Do you have any suggested
13 changes in the way that the Board operates internally?

14 MS. LAWIN: I say unfortunately to begin with
15 because everything takes money.

16 I believe that the two areas that the Board could
17 be better would be in terms of legal and in terms of
18 investigations.

19 And it's not that either of those divisions are
20 doing poor jobs; they are not. It's just that there is a great
21 deal of work, and there are too few investigators and too few
22 attorneys assisting the Board.

23 CHAIRMAN BURTON: Those are the only things you
24 see?

25 MS. LAWIN: Those are, I think, primary issues.
26 There are a number of issues that we have that are ongoing that
27 are being addressed.

28 CHAIRMAN BURTON: Such as?

1 MS. LAWIN: Such as, Commissioner Angele already
2 pointed to them, BWS.

3 CHAIRMAN BURTON: Vanilla ice cream.

4 MS. LAWIN: Those are internal issues that need
5 to be addressed, and they have been, and they are being.

6 CHAIRMAN BURTON: When you ask for information,
7 do you get it?

8 MS. LAWIN: We do. I have requested
9 investigations on several cases, and they have been begun. I
10 have gotten results on them.

11 CHAIRMAN BURTON: They begin a lot of stuff, but
12 they don't seem to finish, at least when we're asking them.

13 MS. LAWIN: Yes, I have had them finished.

14 CHAIRMAN BURTON: You're doing better than we're
15 doing. We should put you on the budget subcommittee.

16 What's your feeling about the Board following the
17 process that several other states and Youthful Correction does,
18 to have inmates be able to comment after statements are made, I
19 would assume, in opposition to he or she getting a date?

20 MS. LAWIN: I'm not opposed to changing the order
21 in which the inmates, victims' next of kin make their statements
22 to the Board.

23 If you're speaking of a rebuttal, I don't believe
24 that that serves anyone very well.

25 But if you're speaking of having the inmate --

26 CHAIRMAN BURTON: If they're making the
27 statement, ipso facto there would be rebuttal in it, but I guess
28 you couldn't have an opening, then something else in rebuttal so

1 they would be able to make their case plus respond, if they're
2 speaking after.

3 MS. LAWIN: Yes.

4 CHAIRMAN BURTON: As opposed to like opening as a
5 comment.

6 Senator Johnson. Senator Hughes.

7 SENATOR HUGHES: Following the questions I asked
8 the previous commissioner and the kind of responses that I got,
9 since you've been in law enforcement for quite sometime, what
10 kind of enlightenment could you give us in terms of criteria
11 with the Board of Prison Terms would use to determine whether
12 parolees pose a danger to the safety of others? And what kind
13 of criteria should be made specific to this regulation?

14 MS. LAWIN: First of all, Senator, I have not
15 been in law enforcement. I have been the head of a police
16 union. I am not a peace officer and have never been a peace
17 officer.

18 CHAIRMAN BURTON: You're a pie card.

19 MS. LAWIN: If you say so. I've been called many
20 things, and that's not one of them.

21 SENATOR HUGHES: I hear you. She's the boss.
22 Nothing wrong with being a boss.

23 MS. LAWIN: Thank you.

24 SENATOR HUGHES: What did you think about the
25 question that I asked about sharing knowledge. You know, even
26 though they told me that they don't have anything to do with
27 this because the Board of Prison Term doesn't deal with the same
28 kind of prisoners, don't you think your service on this

1 commission will equip you with information that should be shared
2 with other correctional divisions? And to what extent are you
3 committed to do that kind of sharing, or do you want to stay in
4 our own little box?

5 MS. LAWIN: I certainly an advocate for sharing
6 information. I served on many labor-management committees,
7 because it seemed the most effective way to deal with issues was
8 by incorporating both management and, in that case, union views,
9 points of view.

10 And I don't intend to stay in a box. At this
11 point, I'm not certain how much expertise I have acquired in
12 last 11 months, but I'm certainly more than willing to share it
13 with anyone else.

14 I always advocate open lines of communication. I
15 think that BPT has that certainly with and Agency and CDC.

16 SENATOR HUGHES: Thank you. That's the kind of
17 response I was seeking before.

18 MS. LAWIN: Thank you.

19 SENATOR HUGHES: I will move.

20 CHAIRMAN BURTON: Do you have any idea what the
21 rule of the Board should be in implementing Prop. 36? Do you
22 guys have to deal with that thing?

23 MS. LAWIN: I can respond generally that the
24 Board has developed proposals which they're working with the
25 Agency on for the implementation of processes for 36.

26 As to the details, I'm not able to deal with
27 those.

28 CHAIRMAN BURTON: Mr. Chairman, do you know when

1 they're going to have that?

2 MR. HEPBURN: Senator, we have a meeting on it
3 this afternoon, as a matter of fact, at Agency to discuss budget
4 proposals and plans, so we're working on that.

5 CHAIRMAN BURTON: Do you know whether you'd be
6 able to share them with us? How is it going to work? If it
7 ends up over there, who's going to make the determination?
8 You're going to make like a proposal to Agency, who will make
9 its findings to the Governor?

10 MR. HEPBURN: It would have to go through Agency,
11 and then to the Governor's office, what ever the plan is going
12 to be.

13 It'll affect us in parole revocations and in how
14 we deal with cases where there is a drug violation, no violence
15 in the past, and things of that nature. And it will probably
16 affect --

17 CHAIRMAN BURTON: You can't revoke somebody for
18 basically failing a urine test?

19 MR. HEPBURN: Yes, assuming they have -- they
20 fit all the other criteria. And then they'll be referred --

21 CHAIRMAN BURTON: How much of the prison
22 population would be affected?

23 MR. HEPBURN: CDC did an estimate, and they
24 figure it'll probably affect about 10,000 cases of potential
25 parole revocations.

26 CHAIRMAN BURTON: When would you have something
27 that we could look at? We really can't look at anything.

28 MR. HEPBURN: As soon as it gets through Agency

1 and the Governor's office. I'm not sure how long that'll take.

2 CHAIRMAN BURTON: When does your term run out?

3 But you have moved your, what, your points?

4 MR. HEPBURN: We've made proposals to agencies
5 already.

6 CHAIRMAN BURTON: All right, thanks.

7 You were involved in the case of an inmate who
8 got a parole date and was required to have a new hearing because
9 of the one tape recording. He was found unsuitable at new
10 hearing. Then he was found suitable again and granted another
11 parole date, in April 2002.

12 Then, during a progress hearing, he was notified
13 there would be no progress hearing, that the case was referred
14 back for a rescission hearing, gravity of commitment offense
15 cited as the reason for the referral.

16 Who the hell makes those decisions? I would
17 assume that you all had the gravity of the offense before you
18 when you did something, when you set the date. Who are these
19 people that decide that you people don't know what you're doing?

20 MS. LAWIN: Decision Review, if you're speaking
21 of Decision Review, consists of several different groups. We
22 have deputy commissioners who review certain aspects of our
23 hearings. We have the attorneys within BPT.

24 CHAIRMAN BURTON: They assumed you didn't know
25 what you were doing.

26 MS. LAWIN: I don't know that that's their
27 position.

28 CHAIRMAN BURTON: What else could it be? In

1 CHAIRMAN BURTON: What else could it be? In
2 other words, if it is whatever the crime is, you're sitting
3 there, and you had the documents. And you've got the DA, and
4 you've got victim, and you've got the perpetrator, and you
5 nevertheless set a date.

6 And they say, "Oh, the gravity of the crime, it's
7 like you didn't take anything into consideration." They're just
8 allowed to substitute their judgment for yours?

9 MS. LAWIN: No, because then it takes Board
10 members who have to agree with Decision Review's decision
11 before -- if you're speaking of taking a date -- before that
12 date can be taken. So it's not just Decision Review's position.
13 It then is reviewed by Board members to decide if they concur or
14 not with the decision.

15 I don't know the individual you're speaking of,
16 but if gravity of the offense was cited, it may be that there
17 wasn't enough on record to indicate that gravity of the offense
18 had been dealt with sufficiently during the hearing.

19 CHAIRMAN BURTON: Isn't that one of the things
20 they talk about?

21 MS. LAWIN: Yes, it is.

22 CHAIRMAN BURTON: Like the heinousness of the
23 crime, so to speak?

24 MS. LAWIN: Yes, it is.

25 CHAIRMAN BURTON: So, they feel you didn't deal
26 with it enough? Like you saw it a different way?

27 MS. LAWIN: It could be. I don't know, again,
28 which case specifically.

1 plain sounds silly to me.

2 I mean, somebody ought to lose their job behind
3 it one way or the other.

4 I mean, if you were making a determination, and
5 you didn't have accurate information or sufficient information
6 about the gravity of the offense, then whoever it was involved
7 in the preparation of that material ought to be looking for a
8 new line of work, like maybe in the automotive appearance area,
9 or something like that. I mean, this is crazy.

10 And then it sounds like you're saying they can
11 change arbitrarily, after the fact, the decision, and then you
12 get to say, "Well, do we really want them to change our
13 decision?"

14 MS. LAWIN: They make a recommendation, Senator.
15 Then, if they made a recommendation that the date not be granted
16 after the fact, it then has to be concurred with by
17 commissioners such as myself.

18 The commissioners would then review the case,
19 review what Decision Review has done --

20 SENATOR JOHNSON: What the hell are we paying you
21 a fat salary for?

22 CHAIRMAN BURTON: It's a generic "you".

23 MS. LAWIN: I understand that.

24 CHAIRMAN BURTON: This, again, is something that
25 should be left to the budget committee, but the process is
26 bizarre.

27 I would have less problem with no "see you later"
28 than the people that are sitting there. And no bleeding hearts

1 I've found. You know, you try to think of bleeding hearts,
2 Bordano, and we all know what a bleeding heart he is.

3 And sets a date. Well, you didn't really
4 consider the fact that it was a multiple mutilated who knows
5 what.

6 I mean, Senator Johnson's right. Either somebody
7 didn't give you the information, the DA didn't tell you, the
8 victim's family didn't tell you, your staff didn't tell you, or
9 else they're saying, "Hell, you didn't know what you were
10 talking about. We're going to say don't do it."

11 Then it goes back to somebody else to say, "Well,
12 even though they said don't do it, we think they ought to do
13 it." Then he says, "Don't do it anyway," which gets to the
14 lady's position that I often wonder why we spend money on Board
15 of Prison Terms. One time we actually cut them out of the
16 budget.

17 I think these are issues that are clearly going
18 to be -- and again, you just happen to be sitting here; could
19 have been anybody else -- that are going to be looked at in the
20 budget, as far as I'm concerned, if we're not happy with the
21 process.

22 We aren't saying to let everybody out. It's with
23 the process, how they do business. There's no need in having
24 them because it is an absolute bureaucratic nightmare. The only
25 reason that it is put up with is because you're dealing with
26 criminals. If you were dealing with an ordinary citizen, I'm
27 trying to think of the worst bureaucracy there is, but I mean,
28 just the way they do business is bizarre, absolutely bizarre.

1 Witnesses in support.

2 Are you going to repeat what you told me in L.A.?

3 MR. VOGTS: Senator, I'll be brief.

4 My name is Jim Vogts. I am today representing
5 the Los Angeles County Professional Peace Officers Association,
6 the Santa Ana Police Officers Association, the Association of
7 Orange County Deputy Sheriffs, Long Beach Police Officers
8 Association, Southern California Alliance of Law Enforcement,
9 the International Union of Police Associations, and believe it
10 or not, I am also representing Don Novey and the California
11 Correctional Peace Officers Association, and the California
12 Coalition of Law Enforcement Associations.

13 CHAIRMAN BURTON: Are you getting paid by each
14 one, or is this pro bono?

15 MR. VOGTS: Senator, in about one more sentence
16 I'm answer that question.

17 I'm also representing Miguel Contreras, the L.A.
18 County Federation of Labor, Bob McCloud, President of PESO, the
19 Public Employees Service Organizations.

20 Had these folks not asked me to represent them
21 today, I would be here anyway on my own. Sharon Lawin is a
22 personal friend of mine, which I will attest to in just a
23 moment.

24 I have spoken with the heads of each of these
25 organizations. It's notable that the last two, the L.A. County
26 Federation of Labor and PESO, Public Employees Service
27 Organizations, whose membership, by the way, comes from a wide
28 geographic area in the state, northern, middle, and southern

1 geographic area in the state, northern, middle, and southern
2 California, they all concur with my assessment of Sharon's
3 ability to do this job. We all agree that in this particular
4 case, the best man for the job is a woman.

5 I would venture to say, I've known Sharon
6 probably, aside from her husband and parents, at least as well
7 as anyone else in the world has ever known Sharon. I met Sharon
8 over 25 years ago when she first came to the Professional Peace
9 Officers Association, as, as I recall, an insurance clerk. I
10 was on the Board of Directors at the time.

11 During the succeeding 25 years, I have grown to
12 know Sharon very well, both professionally and personally. Her
13 integrity, tenacity, intelligence, thoughtfulness are all beyond
14 reproach. I would venture to say that there is no one in the
15 law enforcement community, and no one in the labor community,
16 who would oppose the confirmation of Sharon to this position,
17 including those who don't know Sharon.

18 Those who do know Sharon, I can assure you, in
19 both communities would support her confirmation.

20 As I say, all of her attributes -- I could on and
21 on except that I'm limited by my own personal vocabulary. I
22 can't think of good qualities that should not be attributed to
23 Sharon Lawin, both professionally and personally.

24 CHAIRMAN BURTON: Our limited antsyess is
25 because some of us have to catch a plane.

26 MR. VOGTS: I understand.

27 I think her appointment should be -- we're proud
28 of Governor Davis for the appointment.

1 It should be a source of pride for him.
2 Senators, you, too, can except a degree of pride by confirming
3 or recommending to the full Senate her confirmation.

4 I do want to thank, Senator Burton, you and
5 Nettie, because I have interrupted your days on more than one
6 occasion regarding this confirmation. The patience that you've
7 extended to me are deeply appreciated.

8 Thank you very much, and we would all ask for
9 your aye vote in support of Sharon's confirmation.

10 Thank you, Senators.

11 CHAIRMAN BURTON: I would assume every group is
12 there. Anyone else? Tim.

13 MR. YARYAN: I'll be very brief. It's kind of
14 hard to top Jim's compliments to Sharon.

15 Tim Yaryan, representing the Association for Los
16 Angeles Deputy Sheriffs, Los Angeles Police Protective League,
17 Los Angeles Probation Union, AFSCME Local 685, and Riverside
18 Sheriffs.

19 I could say ditto to Jim. I've known Sharon for
20 over 15 years. I know her to be a very caring, compassionate,
21 thoughtful, fair, and tough-minded lady. I can't think of
22 anybody more temperamentally suited, more intellectually suited
23 for this job than Sharon.

24 I urge your aye vote on confirmation. Thanks.

25 CHAIRMAN BURTON: Other witnesses in support?

26 MR. LeBAS: I heard your admonishment, Senator.

27 Al LeBas, representing the California Peace
28 Officer Memorial Foundation.

1 I, too, have known Sharon for 25 years. She
2 brings to the Board of Prison Terms a person with the greatest
3 professional credentials, both professionally and ethical.

4 The group that I represent heartily endorse her
5 confirmation to the Board of Prison Terms.

6 CHAIRMAN BURTON: Thank you.

7 Any other witnesses in support?

8 Witnesses in opposition? Hearing none, moved by
9 Senator Hughes.

10 SENATOR HUGHES: Thank you.

11 CHAIRMAN BURTON: Call the roll.

12 SECRETARY WEBB: Senator Hughes.

13 SENATOR HUGHES: Aye.

14 SECRETARY WEBB: Hughes Aye. Senator Knight.

15 SENATOR KNIGHT: Aye.

16 SECRETARY WEBB: Knight Aye. Senator O'Connell.

17 SENATOR O'CONNELL: Aye.

18 SECRETARY WEBB: O'Connell Aye. Senator Johnson.

19 SENATOR JOHNSON: Aye.

20 SECRETARY WEBB: Johnson Aye. Governor Burton.

21 CHAIRMAN BURTON: Aye.

22 SECRETARY WEBB: Burton Aye. Five to zero.

23 CHAIRMAN BURTON: Without objection, Ms. McGill
24 will submit more things for the record on this matter. Thank
25 you, ma'am.

26 Thank you and congratulations.

27 MS. LAWIN: Thank you.

1 [Thereupon this portion of the
2 Senate Rules Committee hearing was
3 terminated at approximately 3:00 P.M.]

4 --ooOoo--
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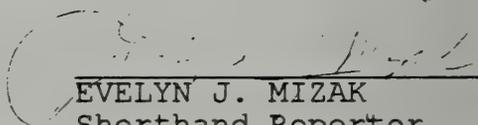
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of Nov, 2000.


EVELYN J. MIZAK
Shorthand Reporter

Angele Testimony

Senator Burton and members of the Senate Rules Committee

My name is Nancy McGill

I am a native Californian who has worked as an operating room nurse and resided in Sacramento county for the past 27 years. While I do not condone blanket parole and I am anxious about public safety, I am here to testify because I am gravely concerned about the lifer parole process with respect to due process, equal protection under the law, ex post facto clauses, and violation of the Eighth Amendment's cruel and unusual punishment clause.

In quoting from the Capitol Alert 8-11-2000, it states: "Davis has loaded the state parole board with conservative Republicans and ex-cops, and it has denied all but a handful of parole petitions. The very few that made it to Davis were either returned for review and rejection or denied outright by the governor, making good on his no-parole pledge, uttered during a 1999 newspaper interview: 'If you take someone else's life, forget it'." With such views in public circulation, Mr. Angele and all of the other Board members ought to be scrutinizing their decisions to reassure everyone that they are not participating in some kind of charade to merely comply with the Governor's desires.

The Board of Prison Terms has become a critical, self-empowered body with a standard of being above the law. In testifying today, I take this opportunity to express my findings and conclusions based on the research I have conducted. Evidence continues to accumulate, showing that the Board's process is not fair, and individual hearings display incidents that signal its unfairness to any reasonable person. My information about certain hearings conducted by Mr. Angele show that he is part of the problem not the solution!

****Mr. Angele has a law enforcement affiliation as do the majority of the other BPT members and he is from the LA area. Hence, his position on the Board detracts from the required diversity of experience and viewpoint. It has long been recognized that a parole Board should include well qualified people with experience in the fields of psychology, education, business, and human resources. It should also have a balance of race, gender and place of residence that reflects the state as a whole. Therefore, this position does not reflect a cross-section of society as stated in PC 5075 and is in violation of the law and good practice. A similarly composed jury in a criminal court would be grounds for a mistrial.

However, the Governor has stated that his judicial appointments should follow his political lead. My appointees should reflect my views. They are not there to be independent agents. They are there to reflect the sentiments that I expressed during the campaign. Obviously the Governor feels the same way about his Commissioners! While I realize the governor appoints the Commissioners, it is the responsibility of this

committee and the entire Senate to act as the check and balance portion of the system to ensure due process and fairness. Therefore, the Senate Rules Committee and the Senate has the power to send a clear message back to the governor that he is not abiding by the law through their appointment denial. Continuing to disregard 5075 makes you just as culpable as the governor.

It has come to my attention that the courts in Marin and San Luis Obispo counties have instructed the Board that parole hearings must be held. With a functioning Board of only 5 members, this requires the postponement of hearings in other counties. Therefore, there is no uniformity and the inmates in these counties are being denied equal protection under the law. Although the law does not specify a commitment to a particular time frame, 5 years can't be exceeded. Thus, a hearing date is totally arbitrary. While it might be a strategy of Governor Davis not to appoint Commissioners in order to reduce litigation and public scrutiny, the tactic remains unlawful. He should abide by 5075 and not hold deserving inmates as prisoners of politics!

I readily admit that the overall conduct of the current Board has improved from the Nielsen panel, but the behavior patterns remain inherently the same as those of past panels. There has merely been a shift in the denial focus due to legislative, judicial, and public scrutiny. In reviewing the 1999 Executive Report on Parole Review Decisions, I noted that inmates were given dates who had negative psych reports, a history of drug abuse, misconduct in prison, no employment plans, gang membership, and a previous criminal record. Yet, to paraphrase Chairman Hepburn at his confirmation hearing on August 7, he stated that an inmate is more likely to be found suitable for parole with no criminal history, disciplinary free behavior, self-help in the form of education and/or vocational training, and positive programming.

In light of the Executive Report and Mr. Hepburn's testimony, one quickly finds themselves asking why these particular inmates were given dates in the first place? There are many inmates who have no previous criminal record, are disciplinary free, have been employed during incarceration, have attended all the self-help classes available, have a positive psych report, and have parole plans including a job and residence. So, why haven't they been given a date? One might conclude that those inmates were given dates simply because the governor could declare them improvidently granted more easily. It is no wonder that many inmates and some attorneys are telling me they think that rather than listening to the inmate, and considering the facts in the file, the Panel's decision to deny parole is still predetermined. This certainly seems quite plausible when one considers the behavior patterns of the Board. Nearly all prisoners continue to be denied parole dates regardless of their suitability and phony reasons are given for the denials. The March 1999, Declaration of Albert Leddy confirmed this suspicion.

It is obvious that the composition of the current panel is different from the Commissioners in '99. However, deserving lifers are still being denied parole regardless of their accomplishments. Parole is written into the law and has served over the years as

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an incentive for rehabilitating prisoners and making them productive members of society. It is really serious when the words in the law lose their meaning! The crime is being utilized as the excuse for denial in addition to inadequate therapy, and no vocational training. And, the DA usually opposes parole. Since the DA is an elected position, it seems quite obvious that parole would be opposed. The matter becomes laughable when one recognizes that their opposition speech is canned. Why does an inmate become more or less suitable for parole based on the composition or the political agenda of the panel?

It is noted that the phrase "unpredictable degree of threat" is being utilized as a general term in counselor evaluations. An attorney spoke with several Counselors and staff members regarding this statement and was told that a conscious decision had been made to use it in the reports to reduce liability. In other words, you can never really predict anyone's behavior relative to future conduct. So, this is a procedural distinction from earlier reporting policies and should not be interrupted by the Board as a behavioral change by the inmate.

Now, you are probably asking what this has to do with Mr. Angele? He has only served on the Board for about a year. The point that I am attempting to make is that the situation is status quo. Chairman Hepburn has not brought a fresh attitude to the job! Nothing has changed from 1999 with the exception that dates are now being given to kidnapers and a few murderers. But, of course, the Governor can only take a date from a murderer. I am not a rocket scientist, but it appears quite evident from the information I have received that there is a pattern of behavior indicating that the Board is merely a puppet of the Governor.

Title 15, Division 2, Chapter 2, Article 2, #2120 states "good time and work time credit shall be deducted from the DSL release date". An inmate's Minimum Eligible Parole Date (MEPD) is calculated at 85% of the sentence at which time the parole hearings commence. Good time is calculated at the time a release date is given. It is easy to see that if the Board granted 4 months good time for every year served, serving 17 years or 204 months would amount to 22 years 8 months which is outside the maximum Matrix guidelines of the Judicial Council. There maybe cases where longer terms are indicated, but these have to be justified. This has not been the case. It is important to remember that the burden of proof for extending a term is upon the state, not the inmate.

It is common knowledge among the legal professionals that the Board has an unwritten policy of not considering an inmate for parole unless the minimum court dictated calendar time has been served (15 to life for 2nd degree and 25 to life for 1st degree). Thus, there is no consideration given to good time and all the hearings prior to the calendar years served are unquestionably procedural. Why on earth are the taxpayers paying a \$95,000/year salary plus per diem, expenses, and benefits for a Commissioner to sit on a panel that has absolutely no intention of paroling the inmate until he has physically served the calendar time imposed by the court? This is a waste of tax dollars!

It seems to me that the Board needs to either obey the law or the law needs to be rewritten. An underground policy is NOT acceptable!

Because prisoners facing a parole hearing tend to be hopeful and because the law says the Panel should give them a parole date if they are suitable for parole, most enter the hearing room with an expectation that a date might be granted or that some reasonable explanation will be given. But, information about Mr. Angele's demeanor, statements, and decisions tells me that he lacks the ability and moral fiber to follow the requirement of the law. So, when Mr. Angele appears rude, disinterested, bored, or makes derogatory remarks the inmates are offended. At the very least, the Commissioners should remain attentive!

There is no need to have a Board that is so flagrant in their application of the law that the courts are compelled to move in. I would like to point out that under 1170 the inmates are incarcerated for punishment, not rehabilitation. Panel members are responsible for articulating their reasoning in any denial of parole because the Board must show facts that support any finding of unsuitability. Form 1000 does not accomplish this goal! The burden of proof for suitability is not that of the inmate who has reached his minimum eligibility parole date. The Commissioners must be able to show they are basing decisions solely on a prisoner's suitability for parole and give them a chance to respond to any new evidence cited by the Board as a reason to deny parole. This is almost laughable because after 15-25 years how could there possibly be any more new evidence. Victim testimony is taken as gospel without investigation and becomes a matter of record. Subsequently, the inmate is forced to deal with possible inaccurate information at future hearings. The conclusions have nothing to do with the facts! Therefore, it may be time for the legislature to re-visit the entire question of victim involvement in parole hearings. At this point, it should also be noted that inaudibles and omissions in Board hearing transcripts continues to remain problematic!

If given a date, the inmate is reviewed by 3 separate panels. The Board meets with the inmate, then later a second BPT panel reviews the information. I would also like to add that during the time between the prison hearing and the other 2 reviews, it appears that documentation is added to the file without the consent or knowledge of the inmate or his attorney. If an inmate is given a date, the file should be seized immediately by an independent party and every single page copied and returned to CDC. Then, if the date is denied either by the BPT or the Governor any additional information added will be obvious. In a court of law, we don't let juries hustle more information from outside the courtroom to help them make a decision. Although a Board hearing is a quasi judicial event, the same rules should apply.

Finally, the governor and his team of lawyers review the information a third time. At the rescission hearing of three inmates granted a parole date in 1999, the DA and sheriff opposed parole based on the violence and circumstances of the original crime, not on the prisoners' present suitability for release. The governor concurred and the date was denied. Yet, when sentencing the inmate, the judge took into consideration the nature of

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the crime. The crime will always remain constant. The inmate can't change that factor. Does this mean there will be more lawsuits and wasted tax dollars?!

The BPT is an unfair panel! At the opening session of the Democratic Convention in LA, Davis spoke of "fairness and justice" as hallmarks of his party. However, we are not here to discuss the Governor nor the Board. We are here to discuss the confirmation of Mr. Angele. It has been my intent to point out to you that the Board, in general, and Mr. Angele specifically are not fair and impartial. Thus, Governor's Davis' statement is nothing more than political propaganda and a crock!

This information and similar opinions which seem to indicate a pattern of behavior were received at my request. Mr. Angele has wrongly explained that the Board does not grant parole. He claims the Board only finds a prisoner suitable for parole and that granting parole is up to the Governor. That is contrary to Penal Code Section 3040 which clearly states the function of the Board is to grant parole. So, how can Mr. Angele do his job if he doesn't know what his job is? And how can the Board of Prison Terms command the respect of prisoners when one of their Commissioners is so clearly mistaken?

Inmate Williams was told that he will never get out of prison and it doesn't matter what he does inside the prison. They discussed the murder, his past history, and his physical stature. What on earth does a man's size have to do with his ability to stay sober, hold a job, be a good citizen, and manage his anger? The inmate has absolutely no control over the size of his hands or his height. Even though the inmate has completed all the panels' recommendations, they continue to deny parole based on the same factors. (form 1000) Mr. Angele must know that it destroys hope to tell an inmate who has completed all of the parole Board's recommendations that the panel is denying him a date based on his appearance. Commissioners have a responsibility to prison staff as well as to the inmates because a person who has been unlawfully and unreasonably denied hope can become a dangerous prisoner.

It is also interesting to note that the Board makes recommendations for therapy that are nonexistent at a prisoner's institution and even within the system. I am referencing the Psychotherapy Memorandum of 8-13-99. Psychotherapy may be provided to lifer inmates when mental health professionals determine it is needed. The mental health staff make the recommendation, not the Board of Prison Terms. Psychotherapy is not provided within CDC to lifer inmates to deal with their commitment offenses. It would be most helpful if the panel was required to be familiar with the programs and services that are actually offered at any given prison. Then, tailor their recommendations accordingly!

It doesn't matter what the trial judge and jury found. The prisoner' efforts at self-improvement? Never enough! The psychologists' and counselors' reports? Discounted! Other prison staff members' input? Doesn't count unless it is negative! The sentencing

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matrixes and suitability guidelines? Ignored! An unbiased parole board? I don't think so! The rare Board decision of suitability for parole? Overruled!

If the governor has stated that no murderer will be paroled and thus far he has lived up to his commitment with the exception of one very safe battered female syndrome case, why do we need a Board of Prison Terms to hear murderers? This one release only came about because of growing pressure from inmates' lawyers, certain lawmakers, judges and editorial writers. It was a safe political maneuver in an effort to prove he reviews each case on individual merit and a blanket policy does not exist. However, Governor Davis has taken it upon himself to act as judge and jury while overriding the court's decision at the time of sentencing, so the BPT is strictly a procedural panel and a waste of tax dollars for a game of power and control to enhance political gain for himself.

It is time the Senate Rules Committee and the Senate utilized their power and discretion in the name of justice and due process! Do not allow Davis to advance his political career at the expense of human lives who are deserving of parole! So, I ask you to have the intestinal fortitude to stand up to the Governor and Mr. Angele's unlawful behavior! Please, take back your power of providing checks and balances to the system while protecting the right to due process and abiding by the law without burdening the taxpayer! Do NOT confirm the appointment of Commissioner Angele!

Thank you!

Lawin Testimony

Senator Burton and members of the Senate Rules Committee

My name is Nancy McGill

My purpose here today is to propose parole reform – not working within the system. It is my intent to prove that the current system does not work and Commissioner Lawin's practice is unlawful. As a citizen, I too, am concerned about public safety. We are in need of change and the first place to start is compliance with the law. However, it is blatantly obvious that the policies of the Governor dictate the behavior of the Board rather than the law. All the political talk in the world will not change this fact!

While I agree that the present Board has softened somewhat in their behavior towards inmates over that of the Nielsen panel, consistency, fairness, lawfulness, and due process should not be affected by the personalities of the members, political pressures, or the political aspirations of a Governor. In a letter from the Federal Public Defender dated September 5, it states that no matter the circumstances or facts, no lifer is found suitable for parole and the findings of unsuitability are based on virtually identical reasons in every case (form 1000). Should an inmate's suitability for parole vary dependent upon the panel's agenda? I think not! This is inappropriate and unlawful, not to mention unfair.

Incarceration is the largest industry and business within our state. We are warehousing human beings! It is important to remember that the goal of the criminal justice system should be to have fewer victims, not just more prisoners! It is a self-perpetuating system whereby the greater the inmate population, the more prison guards required. Increased guard employment creates larger revenues from union dues. Thus, you have an indomitable force with unsurpassed lobbying power and the capabilities of controlling the political arena not only in the capitol, but anywhere in the state. Allowing public safety policies to be defined solely for the self-interest of the politically powerful compromises the interest of all Californians and renders us all more vulnerable. Therefore, we must ask ourselves who is really in the driver's seat of this state?

***I oppose the appointment of Ms. Lawin because of the lack of due process, equal protection, ex post facto clauses, and violation of the 8th Amendment's cruel and unusual punishment clause. PC 5075 requires a cross-section of the racial, sexual, economic, and geographical features of the state's population. She is strongly affiliated with law enforcement and is from the Los Angeles area. Ms. Lawin does not represent a cross section of society by virtue of her employment background or by geographic location. However, it is acknowledged and appreciated that at least one of the Board members is a female. In the 3-5-99 Declaration of Albert M. Leddy, who is a retired attorney and former Commissioner and then Chairman, he states that by appointing and re-appointing BPT Commissioners known to disfavor parole or to favor a "no-parole policy one accomplishes a reduction in parole grants. There are cases pending in the Federal Eastern District Court challenging the due process issue by the BPT. Should the court decide that

California can't abide by their own rules, they may impose an injunction against the Board. This committee and the Senate are obligated to uphold 5075.

Also, I oppose this appointment as a taxpayer. My tax dollars are being wasted! This is strictly a procedural body! Per the LAO 2000-2001 Analysis on Judiciary and Criminal Justice:

Lifer Releases Essentially Discontinued. The number of lifers released to the community diminished during the 1990's according to CDC data. During the 1989 calendar year, 51 1st degree and 2nd degree murderers were released on parole by the BPT. By 1998, the number had decreased to 14 (2 -1st degree and 12 - 2nd degree murderers). Notably, this dramatic slowdown in the rate of parole for lifers occurred even as the pool of lifer inmates eligible for release grew from 300 to 700 inmates per year.

No inmates were released on parole in 1999. On 19 occasions in 1999, the BPT recommended that parole be granted, but in each case the Governor requested to review the case and reversed the parole decision. The Governor has indicated publicly that he objects to the release of anyone who has committed murder.

Ramifications of the New Policy. The unwritten administration policy of no longer releasing from prison any life-term inmate who is eligible for parole has significant legal, policy, and fiscal ramifications for the state criminal justice system.

The no-parole policy for lifers is likely to result in further litigation between the state and inmates seeking parole. The courts could determine that the administration's policy is contrary to state law and restrict the administration's authority over parole releases.

Recent Office of Administrative Law Determination. A recent ruling by a state agency has cast a legal cloud over the administration's actions. In November 1999, OAL Determination # 27 found that the state was denying parole to life inmates as a group, and these actions were illegal because such a policy would have to be adopted as a formal state regulation.

The OAL stopped short of determining whether such a policy was actually in practice, saying that such a determination is beyond its legal jurisdiction. Its written ruling raised the question, however, whether any such regulation establishing a no-parole policy for lifers, if it were to be formally submitted to OAL, would be in conflict with existing statutes and judicial case law governing the parole process. The OAL determination refers to a 1972 California Supreme Court ruling and a 1983 state appellate court ruling which held that state officials could not legally prohibit the release on parole of offenders as a class but were instead required to examine the case of each inmate individually based upon all relevant aggravating and mitigating factors. (Thus, the Governor's statement that each case is evaluated individually.)

Fiscal Impact of Policy Change. It is estimated that more than 4,000 offenders now held in the state prison system at an annual cost of at least \$100 million annually have served the minimum period of prison time to be eligible for parole release. Based on the review of BPT caseload data, the number of additional prison inmates who exceed their minimum eligible release date without being released to the community is about 500 per year. Thus, with each passing year, state incarceration costs for this group of offenders is building by about \$12 million.

In addition, because offenders with life terms ordinarily are held in high-security facilities, the policy has added to the pressure on the state to build additional maximum-security bed space. If it is the intent of the Governor to parole lifers in a pine box, this policy is also driving up CDC medical cost, because aging lifers are more likely to need medical assistance.

I would like to interject here that “as a matter of statistical probability, murderers released from prison are far less likely to commit a new crime than any other category of offender.” As quoted by Leonard Orland in *Justice, Punishment, Treatment: The Correctional Process* page 425.

Daniel Glaser in *The Effectiveness of a Prison and Parole System* tells us the older a man is when released from prison, the less likely he is to return to crime. The extent of a prior criminal record correlates directly with the likelihood of recidivism. The most differentiating of the predictors was prior commitments. The most distinguishing predictor was age upon release. A firmly established finding in criminological research is that of a predominantly inverse relationship between age and recidivism. One can generalize with much confidence for any large cross-section of offenders that the older a man is when released from prison, the less likely he is to return to crime. The lowest recidivism occurs with those offenses most associated with unusual circumstances in the offender's life rather than with offenses pursued as vocations. Assaultive acts occur in situations of unusual emotion and seem to be greatly deterred by confinement. Citing Wenk, Robison, & Emrich the lifer recidivism rate is about 2% while all other crimes in California are a revolving door at approximately 83% by CDC statistics. Yet, in California the aged lifers remain incarcerated and we are to the point that consideration should be given to constructing geriatric prisons. Even those inmates at death's door are refused a compassionate release!

We continue to mention the tremendous concern for public safety relative to lifers even with low recidivism rates. Yet, in the same breath public safety is not discussed when releasing an inmate directly from the shu at Pelican Bay or Corcoran. These inmates are schizophrenic within 6 months and are known to be escorted to the release gate in shackles. Schizophrenia is defined as psychotic reactions characterized by withdrawal from reality accompanying affective, behavioral, and intellectual disturbances. If they are that great a threat, why isn't consideration given to public safety in this particular situation? Is this a dual standard?

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One effect of the no parole policy has been to increase costs for BPT operations. After initially being denied release, the offenders periodically come back to the Board for subsequent hearing, increasing that caseload by 140% during the 1990's.

Analyst's Recommendations. At the time this Analysis was prepared, they were unable to clarify the scope, intent, and reasons for the administration's unwritten policy of halting all releases of lifers to parole.

I feel it is important to note that throughout this report it is taken for granted that there is an unwritten policy. The heading of *Ramifications of the New Policy and Fiscal Impact of Policy Change* demonstrates this quite clearly.

Such a "no-parole" policy is contrary to Penal Code 3041 which requires that BPT "shall normally" set a parole date in most cases, i.e., unless the prisoner is shown to pose a threat to public safety, and that BPT panels shall declare prisoners "suitable" for a future release date and set that release date unless a preponderance of the evidence presented at the hearing demonstrates that the prisoner "will pose an unreasonable risk of danger to society if released from prison."

Although the reluctance to grant parole began in the early 80's under Governor Wilson's regime, BPT panels continue to deny deserving lifers without a preponderance of evidence! The decisions are strictly procedural utilizing form 1000, not taking into consideration the content of the hearing and their level of dangerousness, as reflected by performance, rehabilitation and expert evaluation in their prison records. Although Ms. Lawin can be described as professional, courteous, and understanding, she continues in the same format as the previous Board with a biased agenda. Parole is denied due to the callous manner in which the offense was carried out with no regard for human suffering. The crime can never be remedied, but remains constant.

We all agree that this panel is newly seated, it is my contention that the predominate behavior patterns remain unchanged. Mr. Leddy also noted that it was his experience in which BPT hearing panels often made decisions to deny parole prior to the hearings. Inmates and attorneys feel this situation continues to exist. This is a conspiracy to prevent 1st and 2nd degree murderers from paroling. This no-parole policy is resulting in a situation whereby the inmates are serving terms beyond the maximum prescribed by the Judicial Council in the Murder Matrixes. Therefore, it appears obvious that the Matrix of Base Terms is no longer taken into consideration.

The Determinate Sentence Law (DSL-1170) criteria for release on parole currently in effect is distinctly different from the Indeterminate Sentence Law (ISL - 1168). The main noticeable change from ISL to DSL is that of a philosophy shift from social rehabilitation (ISL) of the life inmate stressing in prison behavior and safety of the

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community to a policy of punishment (DSL) stressing the gravity of the circumstances surrounding the commitment offense.

In a judicial process, which the BPT are considered quasi-judicial officers with administrative, adjudicative, legislative, deliberative duties: there are functional categories as characteristics of the judicial process for the BPT members. In *Cleavenger v. Saxner* the court explained one of the factors to be the insulation from political influence as characteristic of the judicial process. Certainly this is not the situation in California because the Board is NOT a neutral and detached body! In *Rodriquez*, the California Supreme Court chastised the Adult Authority (now BPT) for abusing its discretion in not granting parole dates in accordance with due process and cruel and unusual punishment protections. It appears obvious that this disproportionate discretion continues as an abuse. And in fact, it is worse now than ever dreamed possible by the Adult Authority.

To ensure that life term prisoners would not again be subject to arbitrary authority, the legislature provided just one criteria under which the BPT can defer fixing a tentative release date: ie when the facts demonstrate that the inmate would pose a threat of public safety if released (PC 3041b). This finding must be based on real facts in evidence and not based on mere whim or rumor, and must be determined in accordance with due process. The only body within the State of California that is authorized to create or prescribe punishment for a crime is the legislature, yet the authority for fixing this punishment has been delegated to the BPT empowering them to hear cases and make decisions. Also, they were to use the Judicial Council Sentencing Rules (PC 5076.1).

So, what happened to the lifers incarcerated under the ISL? We continue to warehouse these inmates! It seems evident that the BPT has lumped all the inmates into one category. When convenient they use the atrocious, or cruel and callous manner of the crime while in other situations they deny parole due to lack of programming, failure to develop marketable skills, failed to upgrade educationally/vocationally, not participated in beneficial self-help or therapy programs, and failed to demonstrate evidence of positive change regardless of the evidence provided. (form 1000)

OAL Determination #41 (1998) discusses the unwritten policy of the BPT rescinding the parole dates of life prisoners sentenced under the ISL. They concluded that if the Board has an unwritten policy of scheduling parole rescission hearings for all ISL life prisoners who had previously been granted parole date, resulting in the rescission of those parole dates, then that policy constitutes a "regulation" as defined in the key provision of government code section, subdivision 'g' and is without legal effect until adopted pursuant to the Administrative Procedure Act.

How many times does a deserving inmate have to hear BPT form 1000 quoted? An '86 version of this document was provided for your review. Although the format may have somewhat been altered, the wording remains the same as evidenced by my review of

transcript denials. This document proves the hearings are procedural rather than subjective and indicates the decisions are not based on hearing content. They are merely parole hearing games!

While it is positive that the current panel has reduced it's emotional abuse, rudeness, and retrying the inmate about the crime, the patterns of denial behavior remain unchanged. The decisions are arbitrary with no continuity from hearing to hearing nor recommendations within the capabilities of the inmate or activities available at the institution. As another example: An inmate had been found unanimously suitable for parole on two occasions by Mr. Nielsen and his panel. Which I might add was no small feat! However, an En Banc was held and Ms Lawin informed him that the prior panel may not have made the appropriate decision in granting parole. She said that the current panel just wanted to be sure and do another review as they were new panel members which were not familiar with his case. Isn't it their responsibility to make themselves familiar with the case? The En Banc review stated "the granting of a parole date by the panel on 3-23-98 may be improvident based on the gravity of the commitment offense. The circumstances pose significant risk to the public. The no parole policy strikes one more time!

Their decisions are not based on the evidence presented nor is their compliance with the law. Ms. Lawin does not seem to be familiar with PC 3003b which indicates an inmate may be returned to another county if that would be in the best interests of the public. Factors listed in section b-3: The verified existence of a work offer, or an educational or vocational training, and b-4: The existence of family in another county with whom the inmate has maintained strong ties and whose support would increase the chance that the inmate's parole would be successfully completed. Apparently the Board has their own underground rules or there is a lack of knowledge on the part of Ms Lawin. It does not seem appropriate that a Commissioner is determining the fate of another human beings life and is not familiar with the law!

In closing, the common denominator or theme in each and every piece of correspondence centered around the idea that just maybe at some point in time the statutory law will overcome political ambitions and agendas enabling the Board to abide by the law and be fair in the parole process.

I would like to remind the Senate Rules Committee that the burden of proof for establishing unsuitability is upon the Board. It is not the responsibility of the inmate to prove his suitability under 1170. The BPT is obligated to abide by the Penal Code and Title 15. Had the Board been conscientious and judicious in their decisions, the courts would not be litigating issues of due process, equal protection under the law, ex post facto clauses, and violation of the Eighth Amendment's cruel and unusual punishment clause. As a citizen, I am urging this committee and the Senate to demand lawfulness by the Board and Ms. Lawin. Thus, creating parole reform. You have the power – use it!!!!!! Do Not confirm the appointment of Commissioner Lawin!

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